

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2602 of 2014
and
MP.No.1 of 2014

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.81-C, KRC Complex,
Chennai Salai, Krishnagiri.Appellant/2nd Respondent
...vs..

1.Sankar1st Respondent/Petitioner

2.Pachappa2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 20.09.2013 made in MCOP.No.2183 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Mukund R.Pandiyan for R-1

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 20.09.2013 made in MCOP.No.2183 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Krishnagiri, the 2nd respondent-Insurance Company filed this present appeal for setting aside the finding of the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 06.01.2012, while the petitioner was proceeding from Kelemangalam to Kanakapura in his two wheeler bearing Registration No.KA-04-6260, near Murugan Temple, at about 7.00 p.m., the Tractor bearing Registration

No.TN-70-A-5464 belonging to the first respondent and insured with the second respondent came at high speed driven in a rash and negligent manner dashed against the two wheeler in which the petitioner was proceeding causing him grievous injuries. The accident occurred only due to the negligence of the first respondent Tractor driver. At the time of accident, the petitioner was aged about 40 years and by working as mason was earning a sum of Rs.10,000/- per month. Due to the injuries suffered by the petitioner, he is not able to carry on his regular work and suffered loss of income. Thus, the petitioner sought for a sum of Rs.7,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance Company filed counter contending that the accident does not occur in the manner alleged by the petitioner. It is only due to the rash and negligent driving of the rider of the two wheeler the accident occurred. At the time of accident, the petitioner trying to over take another vehicle, dashed against the Tractor and contributed to the accident. As such the petitioner is solely responsible for the accident. The second respondent is not liable to pay any compensation to the petitioner. Even though the accident took place on 06.01.2012, the complaint was lodged belatedly on 11.01.2012 only. The claim of the petitioner about his age, avocation and income is denied. At the time of accident, the petitioner as well as the driver of the Tractor did not possess valid licence. Hence, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the driver of the first respondent Tractor alone caused the accident and awarded a sum of Rs.4,35,181/- as compensation to the petitioner. Being aggrieved over the finding of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the second respondent-Insurance Company/appellant and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/second respondent-Insurance Company contends that there is no acceptable evidence for concluding that the functional disability of the petitioner was affected and there was actual loss of income suffered by the petitioner. The Tribunal failed to appreciate the evidence properly and adopted multiplier method without any justification. In such circumstances, the respondent sought for reduction of the quantum of award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the petitioner being a mason having suffered fracture in his right hand and grievous injury in his right foot, he is unable to squat and climb steps, which disables him from doing his work as mason. Thus, the petitioner contends that his functional capacity is affected and he has suffered loss of income. Thus, the conclusion of the Tribunal in applying multiplier method for assessing the disability compensation is just and proper and the same need not be interfered with. The petitioner also stated that the amount awarded by the Tribunal under the different heads is based on proper appreciation of the evidence. Hence, the petitioner seeks dismissal of the appeal.

10. The petitioner who deposed as P.W.1 clearly stated that on the occurrence date on 06.01.2012 at about 7.00 p.m., while he was proceeding in his two wheeler bearing Registration No.KA-04-6260, in Thenkanikottai - Kelemangalam Road, near Murugan Temple, the first respondent Tractor bearing Registration No.TN-70-A-5464 came at high speed dashed against the two wheeler which he was riding resulting in fracture of right hand and grievous injuries on his Right foot. The police registered Ex.P1 First Information Report against the driver of the first respondent Tractor only. On the side of the respondents neither oral nor documentary evidence was let in to rebut the version of P.W.1 or the contents of Ex.P1 First Information Report. Even though, the respondents contended that the negligence of the petitioner alone caused the accident, there is no material available on record to support the said contention. As such on the basis of P.W.1 eye witness account of the occurrence as well as the contents of Ex.P1 First Information Report, it can safely be concluded the negligence on the part of the first respondent Tractor driver alone caused the accident.

11. The petitioner states that due to the occurrence, he suffered fracture in his right hand and also grievous injuries in his right leg. He produced Ex.P2 wound certificate issued by Government Hospital, Thenkanikottai. The petitioner also

examined P.W.2 Doctor, who assessed the disability suffered by the petitioner. The said Doctor issued Ex.P8 disability certificate stating that the percentage of disability suffered by the petitioner is 45%. According to him, due to non-union of the fracture suffered by the petitioner, he is not in a position to do any work with his right hand and carry weights in his right hand. According to P.W.2, the function of the right hand is not normal and hence he fixed disability at 65%. On the basis of Ex.P2 wound certificate, the Doctor issued Ex.P8 disability certificate fixing over all disability at 45%. Pointing it out, the learned counsel appearing for the petitioner contended that the petitioner suffered severe fracture in his right hand and due to non-union fracture, he is not in a position to use his right hand to carry on his work as mason. Thus, the petitioner contends that the Tribunal rightly adopted the multiplier method to compensate the petitioner for permanent disability suffered by him. However, P.W.2 Doctor is not the one who gave treatment to the petitioner. Further, Ex.P8 disability certificate is not enclosed with the calculation sheet or details. The functional disability is not assessed for the whole body. In such circumstances, as rightly contended by the learned counsel appearing for the second respondent-Insurance Company, it will be appropriate to compensate the petitioner by adopting percentage method. As the disability suffered by the petitioner is 45%, it will be proper to award Rs.3,000/- per percentage. Hence, the disability compensation is fixed at $45\% \times \text{Rs.}3000/- = \text{Rs.}1,35,000/-$.

12. The petitioner, stated to have been working as mason, he would have easily earned Rs.4,500/- per month. In view of the injuries suffered, he could not have attended to his work at least for six months. Hence, the loss of income during treatment period is calculated as follows. $\text{Rs.}4,500/- \times 6 = \text{Rs.}27,000/-$. Considering the nature of injuries and the period of treatment undergone by the petitioner, he would have needed help of attender. Hence, the sum of Rs.5,000/- is awarded by the Tribunal under the head of attender charges is enhanced to Rs.15,000/-. Further, the Tribunal awarded a sum of Rs.25,000/- towards pain and sufferings. As the same is very meager, a sum of Rs.50,000/- is granted towards pain and sufferings instead of Rs.25,000/- awarded by the Tribunal. The petitioner produced Ex.P6 Medical Bills, the Tribunal accepting the same awarded Rs.26,681/- towards medical expenses, the same is just and proper, it is confirmed. Considering the nature of injuries and the petitioner having suffered permanent disability, a sum of Rs.10,000/- is granted towards loss of amenities of life. Thus, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning capacity	3,24,000.00	-
2.	Pain and sufferings	25,000.00	50,000.00
3.	Extra-nourishment and Transportation	10,000.00	20,000.00
4.	Medical Bills	27,681.00	27,681.00
5.	Partial loss of income	13,500.00	27,000.00
6.	Permanent Disability	-	1,35,000.00
7.	Attender charges	5,000.00	20,000.00
8.	Future Medical Expenses	30,000.00	30,000.00
9.	Loss of amenities of life	-	10,000.00
	Total	4,35,181.00	3,19,681.00

Accordingly, the amount awarded by the Tribunal is reduced to Rs.3,19,681/-.

13. In the result, this appeal is partly allowed. No costs. The sum of Rs. 4,35,181/- awarded by the Tribunal dated 20.09.2013 made in MCOP.No.2183 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Krishnagiri is hereby reduced to Rs.3,19,681/-. The appellant/second respondent Insurance Company is directed to deposit the entire modified award amount of Rs.3,19,681/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Krishnagiri.

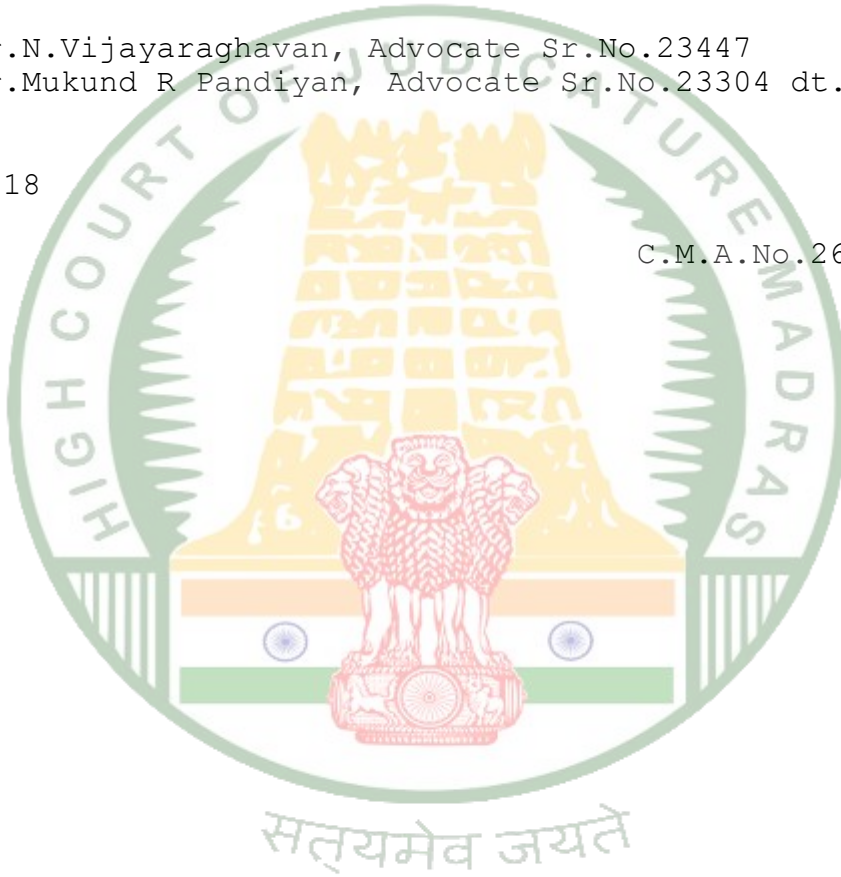
Copy to: The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.No.23447

+1cc to Mr.Mukund R Pandiyan, Advocate Sr.No.23304 dt.7.6.2018

RSY(co)
sm:24.4.2018

C.M.A.No.2602 of 2014



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