

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.56 of 2018

S.Saibabu

... Appellant /Petitioner

...VS...

1.K.Selvakumaran

2.National Insurance Co, Ltd.,
No.751, Anna Salai,
Chennai-600 002.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.07.2013 made in MCOP.No.215 of 2012 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
For Respondent : Mr.S.Vadivel for R-2

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 17.07.2013 made in MCOP.No.215 of 2012 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

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

3. The case of the petitioner is that on 04.09.2010 at about 19.30 hours, while the petitioner was crossing the Pondicherry road in E.C. Salai, a Tata ACE Van bearing Registration No.PY-01-AS-5311 proceeding from Chennai to Pondicherry at high speed, driven in a rash and negligent manner dashed against the petitioner causing grievous injuries on him and as such, the respondents who are the owner and insurer of the offending vehicle are liable to pay a sum of Rs.2,50,000/- as compensation for pain and suffering sustained by the petitioner.

4. On the other hand, opposing the petition, the second respondent/Insurance Company filed a counter stating that the injuries suffered by the petitioner is simple in nature and the offending vehicle was not having any valid insurance coverage and the driver of the vehicle was not having any valid driving license at the time of accident. Thus, the 2nd respondent contended that the claim of the petitioner is unsustainable and sought for dismissal of the petition.

5. To substantiate his claim, the petitioner examined himself as P.W.1 and examined P.W.2 and produced Ex.P1 to Ex.P6 to prove his claim. On the side of the respondents, no oral evidence was let in and no document was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents to pay a sum of Rs.64,500/- as compensation. Being not satisfied with the award passed by the Tribunal, the petitioner/claimant has filed the present appeal for enhancing the quantum of compensation.

7. The learned counsel appearing for the petitioner/claimant contends that the Tribunal awarded only a sum of Rs.2,000/- per percentage towards disability and the same is very low. The Tribunal failed to award compensation under the conventional heads and for loss of income during the period of treatment by the petitioner. Thus, the petitioner seeks to entertain the appeal and to award higher compensation to him.

8. On the other hand, opposing the petition, the learned counsel appearing for the second respondent contends that the claim of the petitioner is frivolous. The Tribunal, after considering the rival contentions, has passed the award on higher side and that itself is not correct and therefore pleads for dismissal of the appeal, since the same lacks in merit.

9. I have considered the rival submissions and perused the materials available on record.

10. It is evident from the evidence of P.W.2 Doctor as well as Ex.P1 Discharge Summary and Ex.P6 Disability Certificate that the petitioner has suffered 20% permanent disability. He has also suffered head injury and as such the Tribunal awarded Rs.2000/- per percentage holding that the disability suffered by the petitioner is 20%. Thus, a sum of Rs.40,000/- is awarded towards compensation of disability. Considering the nature of injuries suffered by the petitioner, as evidenced by P.W.2

Doctor evidence and Ex.P6 disability certificate, it will be appropriate to give Rs.3,000/- per percentage and accordingly for 20% disability, the following sum is to be granted as compensation under the head of disability. $20\% \times \text{Rs.}3000/- = \text{Rs.}60,000/-$.

11. The petitioner claims that he was working as driver and earning a sum of Rs.10,000/ per month. In the absence of any materials to support the same, the Tribunal fixed the notional monthly income of the petitioner at Rs.4,500/-. Considering the fact that the petitioner took treatment only for two days as in patient and time taken for recovery, the Tribunal awarded a sum of Rs.4,500/- towards loss of income. The same is objected to by the petitioner contending that the petitioner was unable to do his work for very long period and the amount awarded under the head of loss of income is very low. Considering the fact that the petitioner was working as driver, his claim that due to the injuries, he was not able to drive the vehicle for long period appears to be genuine and the same is to be accepted. In view of the fact that the petitioner worked as driver and considering the demand for good drivers, the monthly earning of the petitioner can be fixed at Rs.6,500/- and the loss of income for the petitioner can be awarded at Rs.6,500/-. Taking into consideration that the petitioner underwent treatment as inpatient only two days and the injuries suffered by him, it will be appropriate to give Rs.10,000/- for pain and sufferings. The Tribunal has awarded a sum of Rs.10,000/- towards transportation, extra-nourishment, damage to cloths and medical expenses and same is confirmed. In such circumstances, the award passed by the Tribunal modified is as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	40,000.00	60,000.00
2.	Loss of income	4,500.00	6,500.00
3.	Pain and sufferings	10,000.00	10,000.00
4.	Transportation, Damage to cloths and Medical Expenses and Extranourishment	10,000.00	10,000.00
	Total	64,500.00	86,500.00

12. In view of the above modification, the civil miscellaneous appeal is allowed partly with costs. The second

respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.86,500/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and 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. The petitioner/appellant is permitted to withdraw the entire award amount with accrued interest and costs, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

rrg

To

1.The Motor Accident Claims Tribunal
VI Judge, Small Causes Court,
Chennai.

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.6827

+1cc to Mr.S.Vadivel, Advocate SR.No.6125

C.M.A.No.56 of 2018

GJ(CO)
GN(22/03/2018)



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