

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.560 of 2018
and CMP.No.16854 of 2017

K.Raju

..Appellant/Claimant

Versus

1.Sundar Raj

2.M/s.United India Insurance Co.Ltd.,
Oriental Complex, No.77, AA Street,
Salem.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decree and judgment dated 06.02.2006 made in M.C.O.P.No.592 of 2002 on the file of the Motor Accident Claims Tribunal, The Principal Sub Judge, Salem.

For Appellant : Mr.A.Thiyagarajan Senior Counsel
for Mr.J.Ramakrishnan
For Respondents : Mr.T.Ravichandran for R2

J U D G M E N T

The appellant/petitioner has filed this appeal against the decree and judgment dated 06.02.2006 made in M.C.O.P.No.592 of 2002 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Salem. Along with the main appeal, CMP No.16854 of 2017 is taken up and the following order is passed:-

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner-K.Raju is that on 20.03.2002, while he was proceeding in his two wheeler bearing Registration No.TN-27-B-6199 from Dalmia Board to his residence at Jagir Reddipatti around 7.30p.m., near Mahindra Godown and in front of S.R.M.Mineral Mills, a two wheeler bearing Registration No.TN-30-B-4443 which was proceeding from Omalur Main Road towards North came at high speed, dashed against the two wheeler,

resulting in the accident, in which he suffered multiple injury, fracture on frontal head, haemorrhagic collection in frontal sinuses, swallow of frontal scalp and eye-lids, fracture of right zygomatic arch, haemorrhagic contusions over right frontal lobe cortex, extramural haematoma on left parietal and fr onto parietal region, shrinking of right eye, multifarious simple grievous injuries all over his body. Apart from the fracture suffered in various parts, the right eye of the petitioner was affected and he suffered grievous injuries all over his body. After getting treatment in Bharath Hospital, Salem, on 20.03.2002, the petitioner was shifted to A.G.Neuro Hospital (P) Ltd, Salem, and finally took treatment in Manipal Hospital, Bangalore. The accident occurred due to the negligence of the rider of the two wheeler bearing Registration No.TN-30-B-4443. At the time of the accident the petitioner was aged 37 years and was carrying on milk vending business and was also manufacturing P.V.C pipes in the name and style of M/s.Arul Pipes as its proprietor. The petitioner was earning not less than Rs.10,000/- per month. However, due to the injury suffered by him, he is unable to do his normal business activities, resulting in loss of income to the petitioner. Thus, the petitioner seeks a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner. The petitioner did not suffer injuries as claimed by him, but he sustained only simple injuries. The claim of the petitioner about getting treatment in different hospitals is false. The accident occurred not due to the negligence of the 1st respondent driver and as such the 2nd respondent/Insurance Company is not liable to pay any compensation. The claim of the petitioner under different heads is excessive. The accident occurred due to negligence of the petitioner only and as such, the insurer and owner of the two wheeler bearing Registration No.TN-27-B-6199 driven by the petitioner is to be impleaded as parties but having failed to do so, the same is fatal to the petitioner's claim. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.W.1 and P.W.2, and produced documents Exs.P.1 to P.37 to prove his claim. On the other hand, the 2nd respondent/Insurance Company examined R.W.1 and R.W.2 produced documents Exs.R.1 to R.7 to contradict the claim of the petitioner. The Tribunal, on careful analysis of the evidence available on record, found equal negligence on the part of the rider of both the two wheeler contributed to the accident and thus fixed 50% negligence on the

Petitioner and passed award for a sum of Rs.3,06,233/- and allotted 50% of the award viz., Rs.1,53,117/- to be payable by the respondents to the Petitioner. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the Appellant/Petitioner contends that the accident occurred only due to the rash driving of the 1st respondent vehicle by its driver and not due to negligence on the part of the petitioner. The fact that the 1st respondent driver admitted his guilt before the criminal court and suffered punishment as deposed by R.W.2 was not considered by the Tribunal properly. The contents of Exs.P.1 to P.37 clearly proved the case of the petitioner, but the same was not considered properly by the Tribunal. The claim of the petitioner towards medical expenses in Exs.P.7 to P.11 and Exs.P.33 to P.37 had been accepted by the Tribunal in full, but the Tribunal failed to allot the same to the Petitioner. The amount awarded under different heads is very nominal and considering the nature of injury suffered by the petitioner and the partial permanent disability suffered by him, the Tribunal ought to have fixed the compensation at much higher level. Thus, the learned counsel for the appellant/petitioner sought for enhancement of the quantum of award by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the petitioner and as such he is not entitled to seek any compensation. The injuries suffered by the petitioner are only simple in nature and as such, there is no need to compensate him for any permanent disability as claimed by the petitioner. The Tribunal has wrongly awarded excess amount and as such, there is no scope to enhance the quantum of the award passed by the Tribunal. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The petitioner who deposed as P.W.1 clearly stated that on 20.03.2002 at about 7.30p.m., while he was proceeding from Dalmia Colony towards Omalur Main Road at slow speed, the two wheeler bearing Registration No.TN-13-B-4443 came at high speed in opposite direction and dashed against him. In Ex.P.1 - F.I.R also, it is stated so. But R.W.1, disproving the claim of the petitioner, stated that even though the accident occurred on 20.03.2002, the police registered the case after 11 days i.e., on 11.04.2002 only and Ex.R.5 is the letter for further investigation to the police and accordingly after re-investigation, the Police registered Ex.R.7 - F.I.R. It is

further stated by R.W.2 that he analysed the details regarding the accident and filed Ex.R.6 - Inquiry report. During his cross examination, R.W.2 stated that Ex.R.2 - A.R.Copy was registered at 8.40 p.m on 20.03.2002 and F.I.R registered by Omalur Police Station is Ex.P.1; Copy of the Final report is filed as Ex.P.5. It is also admitted by R.W.2 that driver of the two wheeler belonging to the 1st respondent, admitted his guilt before the Judicial Magistrate, Omalur, and paid the fine. However, no documentary proof for the same is produced before the Court. The Tribunal, however considering the fact that R.W.2 did not examine any of the persons connected to the occurrence and filed his report, held that the same cannot be taken into consideration. The rough sketch of the accident spot is not filed. In such circumstances, taking into account the fact that the Police registered the final report against the rider of the 1st respondent two wheeler only and other attendant circumstances and two moving vehicles was involved in the accident, it will be appropriate to fix the negligence at 50% to each of the drivers of the two wheeler. As such, this Court finds nothing wrong in the conclusion arrived at by the Tribunal.

10. The petitioner stated to be 37 years old at the time of the accident and suffered the above said injuries. In Ex.P.2 - Wound certificate, the age of the deceased is stated to be 43 years. Thus, the age of the deceased is taken as 43 years. Even though the petitioner claims that he carried on milk vending business, apart from manufacturing P.V.C Pipes and carrying on agricultural work, no proof regarding his avocation is filed. Likewise, there is no proof to substantiate the petitioner's claim of earning Rs.10,000/- per month. The Tribunal after considering Ex.P.25 - Income tax returns, fixed the annual income of the petitioner from his business carried on under the name of Arun pipes at Rs.60,660/-. The same is just and proper.

11. According to the petitioner, he suffered multiple fracture and multiple grievous injuries and underwent treatment at different hospitals as stated above. The Doctor, who examined the petitioner regarding the permanent disability deposed as P.W.2 and fixed the disability at 40%. According to P.W.2, he examined the petitioner personally and also took X-Ray and C.T.Scan and produced the same as Exs.P.30, P.31, P.32. and fixed the disability at 40%. P.W.2 also stated that due to the injury suffered, the petitioner's matrimonial life is affected and also suffering from other physical disabilities. Likewise, he stated that due to injury suffered, the petitioner's capacity to do his regular work is affected. However, P.W.1 in his cross examination admitted that even prior to the accident, he took treatment for A.G.Neuro from Doctor Soudaraj. However, he would state that he is suffering from fits only due to the injuries

suffered in the accident. As such, the Tribunal is justified in fixing the disability at 20% and awarding compensation by adopting the multiplier as '16'. The computation of the Tribunal in this regard is as follows:-

Rs.60,660/- x 16 = Rs.9,70,560/-.

Rs.9,70,560 x 20% = Rs.1,94,112/-.

Thus, the loss of earning capacity due to the permanent disability will be Rs.1,94,112/-.

Thus, the compensation for the permanent disability as calculated by the Tribunal is just and proper. The same needs no interference.

12. The petitioner has suffered fracture and grievous injuries and as such, he has taken treatment in different hospitals over long period. As such, he would have suffered Pain and Suffering. The Tribunal awarded Rs.2,000/- towards Pain and Suffering. This Court is of the view that the same is on the lower side,. Hence, a sum of Rs.40,000/- is awarded towards Pain and Suffering.

13. The petitioner states that he underwent treatment as inpatient in different hospitals and also produced Exs.P.7 - P.11 medical bills to substantiate his claim. It is clear from the documents produced, that a sum of Rs.1,25,174/- is incurred towards medical expenses. The petitioner also produced Exs.P.36 and P.37 - Medical bills to substantiate his claim. Considering the same, this court is inclined to award the said sum of Rs.1,25,174/- towards medical expenses. Even though the petitioner claimed Rs.1,97,510/- towards other medical expenses, the Tribunal after considering the documents, awarded Rs.98,755/-.

14. The petitioner filed C.M.P.No.16854/2017 seeking to receive additional three documents. Even though three documents mentioned in the above said CMP, only medical bills is available and as such, Sl.No.3 of the document is alone taken on file and CMP.No.16854 of 2017 is allowed partly. In respect of other two documents, as the same is not available they are not received as additional evidence. Therefore, Sl.No.3 - Medical Bills and treatment documents (series) for the year 2006 to 2016 is marked as Ex.P.38. Taking into consideration the said documents along with the medical bills earlier filed before the Tribunal, in all, a sum of Rs.3,14,124/- is provided under the head "medical expenses".

15. The petitioner also produced transport bill under Ex.P.21. Accordingly, the Tribunal granted Rs.9,166/- towards transport expenses. Keeping in mind the period of treatment as inpatient underwent by the Petitioner and other attendant circumstances, this court is inclined to award Rs.15,000/- under the head "Transport to Hospital"; Rs.15,000/- under the head

"Loss of amenities"; Rs.1000/- under the head "Damage to clothing and articles" and Rs.20,000/- towards "Loss of earning", altogether, in total Rs.5,99,236/- as compensation for the injuries sustained by the Petitioner.

16. Accordingly, the compensation awarded by the Tribunal stands modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Permanent disability	1,94,112	1,94,112
2	Transport expenses	9,116	15,000
3	Medical expenses	98,755	3,14,124
4	Pain and suffering	2,000	40,000
5	Extra nourishment	2,000	---
6	Damage to clothes	200	1,000
7	Loss of amenities	---	15,000/-
8	Loss of earning during period of treatment	---	20,000/-
	Total	3,06,233/-	5,99,236/-

As stated earlier, since the petitioner is held to be negligent and responsible to the extent of 50% for causing the accident, he will be entitled for compensation from the respondents to the extent of 50% only. Thus, he will be entitled for a sum of Rs.2,99,618/-.

17. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The Appellant/Petitioner is entitled to award amount of Rs.2,99,618/- [Rupees Two lakhs ninety nine thousand six hundred eighteen] being 50% of the modified quantum of award at Rs.5,99,236/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(v) On such deposit, Appellant/petitioner is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The appellant/petitioner is not entitled to interest for the delay of 3439 days + 72 days in representing and filing the CMA before this court. [Vide order of this court dated 07.02.2018 in CMP.No.14184/2016 & order dated 01.03.2018 in CMP.No.3485/2018 in CMA.SR.No.66308 of 2006]. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Salem.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.25853

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.26327

C.M.A.No.560 of 2018

VGII (CO)
GSP(11/07/2018)

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