

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.281 of 2017

P.Parthiban

...Appellant/Petitioner

vs

1.S.Rajaseelan

2.The National Insurance Co.Ltd.,

Now, the 2nd respondent having office at
No.46, Moore Street, III floor,
T.P.Cell, Chennai-1

..Respondents/Respondents

1st Respondent set exparte in the
Lower court

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.12.2015 made in M.C.O.P.No.4777 of 2010 on the file of Motor Accident Claims Tribunal, Special-Sub Judge, No.1, Chennai.

For appellant : : Mr.Anand

For Respondents : :

for R1 : : Notice dispensed with.

for R2 : : Mr.D.Bhaskaran

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant, challenging the judgment and decree dated 22.12.2015 made in M.C.O.P.No.4777 of 2010 on the file of Motor Accident Claims Tribunal, Special-Sub Judge, No.1, Chennai.

2. The case of the petitioner is that on 12.07.2010, at 17.30 hours, when the petitioner was travelling as a pillion rider in a two wheeler bearing Reg.No.TN-20-BY-5982 from east to west in Mount to Poonamallee Road, a Mahendra Van bearing Reg.No.TN-04-Y-6384, owned by the 1st respondent and insured

with the 2nd respondent coming in the opposite direction at high speed and driven in a rash and negligent manner, dashed against the two wheeler in which the petitioner sustained grievous multiple injuries all over the body. According to the petitioner, the rash and negligent driving of the 1st respondent van driver alone caused the accident and as the owner and insurer of the vehicle, the respondents are liable to pay the compensation. The petitioner further states that on the date of the accident, he was working as a Mechanic at Aarthi Bajaj Motors at Iyyappanthangal and was earning a sum of Rs.5000/- per month. The petitioner states that due to permanent disability suffered by him, he is not able to attend to any work. Thus, the petitioner claims a sum of Rs.6 lakhs as compensation for the injuries suffered by him.

3. On the other hand, opposing the petition, the 2nd respondent/Insurance Company filed a detailed counter contending that the petitioner has to prove his age, avocation, income, disability suffered by him and the manner of accident. It is further stated that the petitioner also contributed to the accident by his own negligent act and as such, the 2nd respondent alone cannot be held responsible for the accident. It is further stated by the 2nd respondent that no material is placed before the court to prove the nature of injury suffered by the petitioner as alleged by him. Thus, the 2nd respondent seeks dismissal of the petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2 and produced documents Ex.P.1 to P.12 to prove his claim. On the respondent side, neither oral evidence nor documentary evidence was produced. The Tribunal considering the materials available before it, found that the 1st respondent van driver alone is responsible for the accident and awarded a sum of Rs.4,02,250/- as total compensation payable by both the respondents. Being not satisfied with the award amount, the petitioner/claimant has come forward with the present appeal.

5. The learned counsel for the appellant/ injured petitioner contends that even though medical evidence produced by the petitioner clearly established the disability suffered in the accident at 55%, the Tribunal wrongly fixed the disability at 25% and applied multiplier theory. The petitioner states that the Tribunal ought to have awarded 50% of the income towards future prospects and applied multiplier of 15. It is further contended that the amount awarded by the Tribunal under various heads is very low and the Tribunal failed to award just and proper compensation for the serious injuries suffered by the petitioner. Hence, the petitioner seeks to entertain the appeal.

6. On the other hand, refuting the same, the learned counsel for the 2nd respondent/Insurance Company contended that the medical expert who deposed as P.W.2 has not treated the petitioner but only issued disability certificate fixing disability at 55% and the said disability certificate is not supported by any calculation memo of the doctor concerned. Further the learned counsel for the 2nd respondent contended that unless and until injury suffered by the petitioner resulting in loss of earning capacity, he cannot be awarded any amount towards future prospects. In the present case, injury has not caused any such permanent disability. It is further contended that the amount awarded under various heads is on the higher side and the same is to be reduced. Thus the 2nd respondent/Insurance company seeks dismissal of the appeal.

7. The fact that the appellant/petitioner met with the accident on 12.07.2010 at 17.30 hours in Mount to Poonamallee road, is admitted. However, the 2nd respondent has only disputed the manner of the accident. The petitioner, who suffered injuries in the accident and deposed as P.W.1 stated that while he was driving as pillion rider in two wheeler on 12.07.2010, a Mahendra Van bearing Reg.No.TN 04 Y 6384 came at high speed in the opposite direction and dashed against the two wheeler, resulting in the accident as stated earlier. Further a case has been registered against the 1st respondent driver of the van and the same is evidenced by Ex.P.7 copy of FIR. The evidence of P.W.1 and the contents of Ex.P.7 FIR clearly shows that the accident occurred only due to the negligence of the driver of the 1st respondent van. The claim of the petitioner is not contradicted by the 2nd respondent by letting in any oral or documentary evidence. In such circumstances, the finding of the Tribunal that the accident occurred only due to the negligent driving of the 1st respondent van driver is just and appropriate and the same is confirmed. The fact that the offending vehicle Mahindra van bearing Reg.No.TN 04 Y 6384 was owned by the 1st respondent and insured with the 2nd respondent is also not disputed by the 2nd respondent. The policy and other particulars regarding the said Mahendra van bearing Reg.No.TN 04 6384 has been given and the petitioner's claim is not denied by the respondents. Hence, the claim of the petitioner that the 1st and 2nd respondents who are the owner and insurer of the said vehicle is liable to pay compensation is correct and the conclusion of the Tribunal in that regard is confirmed.

8. The petitioner claims that he was working as a Mechanic at Bajaj Motors, Ayyappanthangal, and was earning a sum of Rs.5000/- per month at the time of accident. It is evident from Ex.P.1-OP Record, P.2 to P.4 -Discharge summary, P.6-Photograph, Ex.P.9 Accident Register, P.10 and P.11-X-rays that the petitioner has suffered grievous injuries. It is also evident

from Ex.P.2 to P.4-Discharge summary that the petitioner sustained crush injury and fracture of both bones in the right leg and took treatment as inpatient for more than 125 days in Government Stanley Hospital, Chennai, for 3 spells. Considering the nature of injury and the treatment taken by him, it is clear that the petitioner could not have attended to his regular work for a longer period of time. The Tribunal, took into consideration the nature of avocation and income of the petitioner and fixed the notional income at Rs.3,500/-. However, considering the fact that the petitioner was employed as Mechanic, it will be appropriate to fix notional monthly income at Rs.5000/- per month. In such circumstances, the loss of income suffered by the petitioner while taking treatment, is as follows:-

$$\text{Rs.5000} \times 12 = \text{Rs.60,000/-}$$

Thus towards "Loss of income during the period of treatment", this court is inclined to award Rs.60,000/- to the appellant/petitioner.

9. The petitioner has examined medical witness as P.W.2 who issued Ex.P.12 disability certificate assessing the permanent disability suffered by the petitioner as 55%. However, the Tribunal on the ground that P.W.2 has not treated the petitioner and also not furnished any calculation memo or working sheet for arriving at the disability arrived at, fixed the disability at 25%. Challenging the same, the petitioner/claimant contends that the petitioner has suffered severe injuries and considering the fact that he is not able to operate his hands, resulting in his disability to attend to his work as he used to, the Tribunal ought to have accepted the disability as fixed by P.W.2 doctor. Considering the nature of injuries suffered by the petitioner, as evident by Ex.P.9 - A.R.Copy, Ex.P.2 to Ex.P.4-Discharge summary and Ex.P.12 disability certificate, this court is of the view that the disability suffered by the petitioner can be fixed at 35%, since he has suffered fracture. Further the petitioner was aged 19 years at the time of accident. Hence, the correct multiplier to be applied is 18. Considering the age of the petitioner, his disability and the loss of earning power in future, this court is inclined to fix 50% of the monthly income as loss of future earning capacity and the calculation of loss of income, due to permanent disability, is as under:-

Rs.5000/- + 50% addition towards future loss of earning power

$$\text{Rs.5000/-} + \text{Rs.2500} = \text{Rs.7,500/-}$$

$$\text{Rs.7500} \times 12 \times 18 \times 35/100 = \text{Rs.5,67,000/-}$$

The Tribunal, in all, has awarded the following amounts as compensation, including the pecuniary and non-pecuniary damages to the petitioner:-

Loss of earning during treatment = Rs.35,000/-

Expenses towards conveyance = Rs.6,000/-

Extra Nourishment cost	= Rs.15,000/-
Attender Charges	= Rs.9,000/-
Damages to articles	= Rs.1,000/-
Compensation for disability	= Rs.2,36,250/-
Pain and suffering	= Rs.50,000/-
Compensation for loss of future amenities	= Rs.50,000/-
Total	=Rs.4,02,250/-.

10. In the light of the above discussion, the amount awarded by the Tribunal under various heads is modified as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earning during treatment	Rs. 35,000/-	Rs. 60,000/-
2	Expenses towards conveyance	Rs. 6,000/-	Rs.25,000/-
3	Extra Nourishment cost	Rs. 15,000/-	Rs.25,000/-
4	Attender charges	Rs. 9,000/-	Rs.25,000/-
5	Damages to articles	Rs. 1,000/-	Rs.1,000/-
6	Compensation for disability	Rs.2,36,250/-	Rs.5,67,000/-
7	Pain and suffering	Rs. 50,000/-	Rs.50,000/-
8	Compensation for loss of future amenities	Rs. 50,000/-	Rs.50,000/-
	Total	Rs.4,02,250/-	Rs.8,03,000/-

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is enhanced to Rs.8,03,000/- from Rs.4,02,250/-.
- (ii) 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.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to

withdraw the amount awarded as above with accrued interest, by filing proper application before the Tribunal, less the amount if any already withdrawn. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

- (v) The appellant/petitioner shall pay the required court fee, in the light of the enhanced compensation as ordered by this court, at the time of receiving order copy of appeal.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Special - Sub Judge, No.1, Chennai.

Copy TO

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.Anand & Surya, Advocate SR.No.7642

+1cc to Mr.D.Bhaskaran, Advocate SR.No.7822

SSI (CO)
GN(28/03/2018)

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