

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2747 of 2014

M.S.Viswanathan

...Appellant/Petitioner before
the Tribunal below

vs

1.M/s.Religare Finvest Ltd.,
No.23, Modern Towers, 3rd Floor
West Cott Road, Royapettah
Chennai-600 014

2.National Insurance Co.Ltd.,
BMC House, Connaught palace
New Delhi-110 001

..Respondents/Respondent before
the Tribunal below

Civil Miscellaneous Appeal filed against the judgment and decree dated 28.02.2014 made in M.C.O.P.No.3182 of 2012 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For appellant : : Ms.Saleem Fathima
for Respondents : : Ms.N.B.Surekha for R2.
R1- Given up.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 28.02.2014 made in M.C.O.P.No.3182 of 2012 on the file of Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 21.06.2012 at 22.45 hours, while the petitioner was riding his motor cycle bearing Reg.No.TN-55-AB-0565 in the New Avadi Road, Chennai, from east to west, a car bearing Reg.No.TN 06 C 3064 proceeding in the same direction, driven by its driver in a rash and negligent manner, hit against the petitioner's vehicle, thereby, the petitioner sustained grievous injuries. The Petitioner

claimed total compensation of Rs.6,00,000/- for the injuries sustained by him.

3. On the other hand, opposing the petition by filing counter, the 2nd respondent/Insurance Company contended that the nature of accident and the manner in which it happened is to be proved by the Petitioner. The 1st respondent vehicle insured with the 2nd respondent and the driver had valid driving license at the time of alleged accident, also has to be proved. The claim made under various heads are excessive. Hence, the 2nd respondent sought dismissal of the claim petition.

4. Before the Tribunal, the petitioner examined P.W.1 and P.W.2 and produced documents Ex.P.1 to P.8. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. On the basis of available materials on record, the Tribunal found that the 1st respondent vehicle driver was responsible for the accident and the 2nd respondent, as the insurer of the 1st respondent vehicle is liable to pay the compensation to the petitioner. By taking into consideration all the available evidence before it, the Tribunal awarded a sum of Rs.1,06,100/- as compensation to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. The learned counsel for the appellant/petitioner contends that the Tribunal failed to consider the disability suffered by the Petitioner at 20% as proved by the medical evidence. The finding of the tribunal about the nature of injuries suffered by the petitioner is not correct. The amount awarded by the Tribunal is on the lower side. Hence, the petitioner seeks to allow the appeal and sought for enhancement of the award amount as prayed for in the Petition.

7. Per contra, the learned counsel for the 2nd respondent contends that the award passed by the Tribunal is on proper appreciation of the materials before it and as such the same needs no interference. Hence, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

8. The Petitioner who deposed as P.W.1 stated that he sustained injuries in the accident and was treated as inpatient at Stanley Hospital. Ex.P.2 is the copy of Accident Register issued by Government Stanley Hospital, which shows that the petitioner sustained amputation of left middle finger and terminal phalanx. Ex.P.3-OP Chits show that the petitioner sustained crush injury in his right middle finger and total

right middle Tpx was done to him. P.W.2 doctor assessed the total and permanent disability of the petitioner at 20%. Ex.P.7 and Ex.P.8 are disability certificate and X-ray respectively. The Tribunal after considering the above mentioned documents, fixed the disability at 5%. It was deposed by P.W.1 that he was working as Design Engineer in M/s.Durr India Private Limited, Chennai-18 and earning Rs.9,000/- per month. However, as there is no supportive evidence, the Tribunal fixed Rs.8,000/- per month. For the permanent disability fixed by the Tribunal at 5%, the loss of earning power due to permanent disability in future was calculated by the tribunal, as under:-

$\text{Rs.8000} \times 12 \times 17 \times 5\% = \text{Rs.81,600/-}$

In all, the Tribunal awarded a sum of Rs.1,06,100/- as compensation to the petitioner under various heads as shown below:-

Loss of earning	: Rs.3,000/-
Transport to Hospital	: Rs. 500/-
Extra Nourishment	: Rs. 1,000/-
Medical expenses	: Rs 5,000/-
Loss of marital and social status	: Rs.5,000/-
Pain and suffering	: Rs.10,000/-
Disability	: Rs.81,600/-

Total : Rs.1,06,100/-

9. The petitioner/claimant who deposed as P.W.1 stated that he sustained amputation of left middle finger terminal phalanx, crush injury in right middle finger and therefore, he is not able to do his designing work as an Engineer and finding difficulty in handling the parts of machine. P.W.2 doctor assessed the disability of the petitioner at 20% and opined that the right hand gripping power is reduced. The disability certificate issued by P.W.2 is marked as Ex.P.7. However, the Tribunal, fixed the disability at 5%. Challenging the same, the petitioner contends that there is no ground to reduce the disability. Considering the nature of injury suffered and the treatment undergone by the Petitioner and other factors, this court is inclined to fix 10% disability. Further, the Tribunal while taking into consideration the age of the deceased as 22 years at the time of the accident and that he was working as Design Engineer in a Private concern, fixed Rs.8000/- as his monthly income and applied multiplier of 17 for the future loss of earning, which, in my considered view appears to be just and proper. Accordingly, the future loss of earning power to the petitioner due to the disability suffered by him, is calculated as under:-

$10\% \text{ disability} \times 8000/- \times 12 \times 17 : \text{Rs.1,63,200/-}$.

10. On a perusal of the compensation amounts granted under Medical Expenses, Transport to Hospital, Extra Nourishment, Loss

of marital and social status and Pain and suffering, this court is of the considered view that the same are not just and proper. Therefore, under the head "Medical Expenses", a sum of Rs.10,000/-; for "Transportation charges", a sum of Rs.5,000/-; towards "Extra Nourishment", a sum of Rs.5,000/- ; for Loss of marital and social status, Rs.25,000/- and for Pain and suffering, a sum of Rs.25,000/- is awarded by this Court. Since the petitioner underwent treatment as inpatient and suffered amputation and crush injury in both hands, towards attender charges, a sum of Rs.10,000/- is awarded. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of earning power due to Permanent disability	Rs. 81,600/-	Rs. 1,63,200/-
2	Medical expenses	Rs. 5,000/-	Rs. 10,000/-
3	Loss of earning	Rs. 3,000/-	---
4	Transportation charges	Rs. 500/-	Rs. 5,000/-
5	Extra Nourishment	Rs.1,000/-	Rs.5,000/-
6	Loss of marital and social status	Rs.5,000/-	Rs.25,000/-
7	Pain and suffering	Rs.10,000/-	Rs.25,000/-
8	Attender charges	----	Rs.10,000/-
9	Damage to articles	---	Rs. 1,800/-
	Total	Rs. 1,06,100/-	Rs. 2,45,000/-

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed as shown below:-

- (i) The award of the Tribunal is modified and enhanced to Rs.2,45,000/- from Rs.1,06,100/-
- (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 modified 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, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Motor Accidents Claims Tribunal,
IV Court of Small Causes, Chennai.

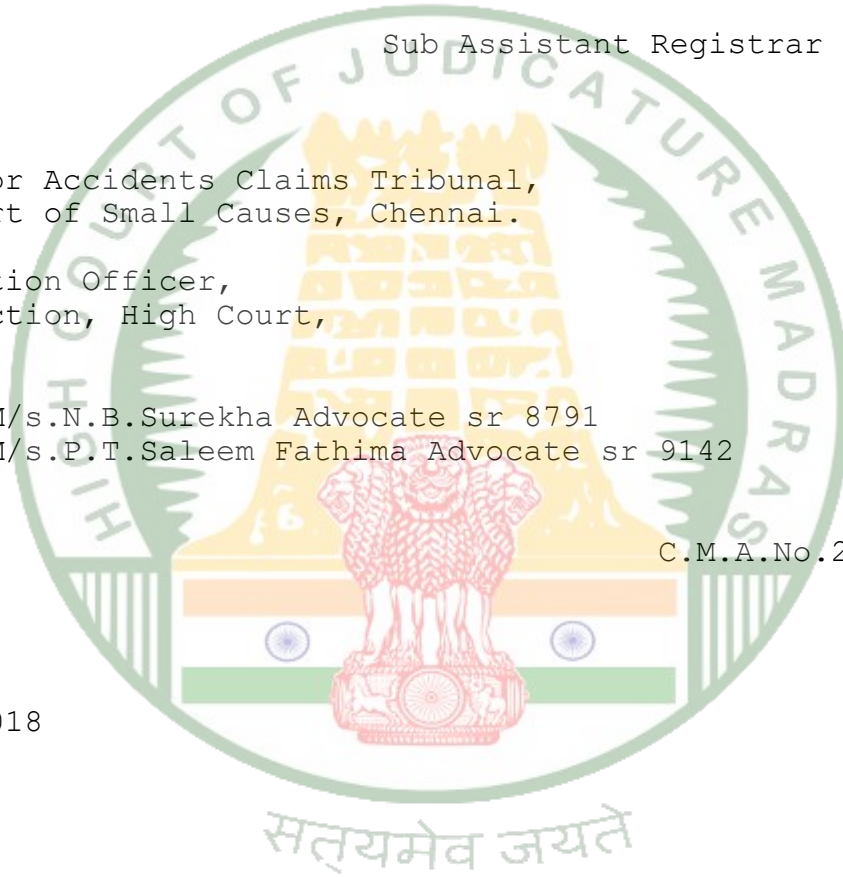
2.The Section Officer,
V.R.Section, High Court,
Madras.

+1 cc to M/s.N.B.Surekha Advocate sr 8791

+1 cc to M/s.P.T.Saleem Fathima Advocate sr 9142

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