

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2860 of 2017

M.Karuppasamy ... Appellant/Petitioner
...vs..

1.T.R.Varadharajan
2.The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai-600001. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 26.04.2005 made in MCOP.No.5306 of 1999 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondent : Mr.J.Chandran
for R2

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decretal Order dated 26.04.2005 made in MCOP.No.5306 of 1999 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.

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

3. The petitioner/claimant is appellant herein. The first respondent is the owner and the second respondent is insurer of the offending vehicle. According to the petitioner, on 20.03.1998 at about 2.00 a.m., when the petitioner was sitting in front of the Commission Shop in Ettayapuram Road, the Lorry bearing Registration No.TCM 480 came at a high speed dashed against the petitioner resulting in grievous injuries to the legs of the petitioner. Consequently, the petitioner has come forward with this petition seeking compensation of Rs.1,50,000/-.

4. On the other hand, opposing the claim petition, the

second respondent/Insurance Company filed counter contending that the petitioner has to prove that the offending vehicle was insured with them and the driver of the lorry possessed valid driving license at the time of accident. The second respondent also disputed the claim of the petitioner regarding his avocation and income. He further stated that the driver of the first respondent lorry is not responsible for the accident. Hence, the second respondent sought for dismissal of the petition.

5. To substantiate his claim, the petitioner examined himself as P.W.1 and medical expert was examined as P.W.2 and produced Ex.P1 to Ex.P8 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.1,01,570/- as compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with the present appeal.

7. The learned counsel appearing for the appellant/claimant contended that the Tribunal failed to consider Ex.P5 Photo with negative and erred in assessing the disability suffered by the petitioner. The petitioner having suffered 65% disability and the movement of the right leg totally restricted, he is unable to do the carpenter work after the accident and as such the finding of the Tribunal that the appellant did not suffer any loss of income is not correct. The Tribunal also failed to appreciate the evidence of P.W.2 Doctor properly. Thus, the petitioner seeks to enhance the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the second respondent/Insurance Company contended that the petitioner has not produced any acceptable evidence to prove that he has suffered loss of income and the Tribunal has correctly appreciated the evidence available before it and arrived at just and proper conclusion. The second respondent further contended that the finding of the Tribunal need not be interfered with and he sought for dismissal of the appeal.

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

10. The petitioner has deposed as P.W.1 and stated that when he was sitting in front of Vilathikulam Commission Shop, the first respondent Lorry bearing Registration No.TCM 480 came at high speed in a rash and negligent manner dashed against him resulting in grievous injuries. The petitioner also produced Ex.P6 copy of the First Information Report to substantiate his contention. It is evident from P.W.1's evidence and Ex.P6 first information report that the driver of the first respondent lorry alone is responsible for causing the accident due to his rash and negligent driving. The respondents has not produced any oral or documentary evidence to contradict the claim of the petitioner. Thus, on the basis of Ex.P6 copy of the first information report and the evidence of P.W.1, it is clear that the driver of the first respondent lorry alone is responsible for the accident as found by the Tribunal. The said conclusion is just and proper and needs no interference.

11. The petitioner states that he took treatment as inpatient in Government Hospital, Tuticorin from 20.03.1998 to 06.05.1998 and suffered various injuries all over the body. It is further stated that the petitioner suffered crush injury in both his legs. The petitioner further stated that he underwent skin grafting in the private hospital on 28.05.1998 and he was inpatient in the hospital from 06.05.1998 to 28.05.1998. The Doctor who deposed as P.W.2 stated that the petitioner's right leg was damaged and the little finger was cut off and due to skin grafting in the right foot, the petitioner is unable to bend his right leg. He also stated that in the left leg also there is fracture and as such the permanent disability suffered by him is 65%. The disability certificate is produced as Ex.P7 and X-ray as Ex.P8. Taking into consideration the evidence of P.W.1 and P.W.2 and considering the documents, namely, Ex.P5, Ex.P7 and ExP8, the disability suffered by the petitioner is fixed at 50%. Considering the fact that the petitioner was working as carpenter and the nature of injuries suffered by him, it would not have been possible for him to do work for four months, during which period he would have suffered total loss of income. Considering the age of the petitioner is 43 years and he was working as carpenter and he has suffered 65% disability as concluded earlier, this Court is of the view that it would be appropriate to award compensation at Rs.2,000/- per percentage of the disability.

12. Accordingly, the compensation payable is assessed as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability 50% x Rs.2000/- = Rs.1,00,000/-	60,000.00	1,00,000.00
2.	Loss of income for 4 months	7,000.00	30,000.00
3.	Pain and sufferings	10,000.00	50,000.00
4.	Medical Expenses	18,567.00	20,000.00
5.	Transport to Hospital	3,000.00	10,000.00
6.	Extra nourishment	3,000.00	15,000.00
7.	Attender Charges	-	10,000.00
	Total	1,01,567.00	2,35,000.00

13. In view of the above modification, the civil miscellaneous appeal is allowed with costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.2,35,000/- with interest at the rate of 7.5% p.a. 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 petitioner/appellant is permitted to withdraw the entire award amount with proportionate interest and costs, by filing necessary application before the Tribunal. The petitioner/claimant is directed to pay the Court fee for the extent of enhancement of the award amount within a period of two weeks from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

rrg
To

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

Copy to

The Section officer, VR Section, High Court, Madras.

+1 CC to Mr.J. Chandran, Advocate sr 7919.

+1 CC to Mr.A. Shanmugaraj, Advocate sr 8163.

C.M.A.No.2860 of 2017

SP(26/02/2018)