

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2980 of 2017
and CMP.No.17506 of 2017

M/s.TATA AIG General Insurance Company Limited
No.72, Dr.Balasundaram Road
May Flower Towers Castele
1st Floor, Coimbatore-641 018

..Appellant/
3rd Respondent

Versus

1.M.Senthilvelan ...Respondent No.1/Petitioner

2.A.Venkatesan ...Respondent No.2/Respondent No.1

3.P.Arjunan ...Respondent No.3/Respondent No.2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.11.2016 made in M.A.C.T.O.P.No.102 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordiante Court, Erode.

For Appellant : Mr.N.Vijayaraghavan
For respondents : M/s.N.Manokaran for R1.

J U D G M E N T

The 3rd respondent/Insurance Company as appellant has filed this appeal against the judgment and decree dated 21.11.2016 made in M.A.C.T.O.P.No.102 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordiante Court, Erode.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The Petitioner states that on 21.12.2014 at about 8 a.m., as he was riding his motor cycle bearing Reg.No.TN-56-7698 in Erode to Chenimalai Road while going near Railway Diesel shed opposite to Sakthi Tailor Shop, the mini auto bearing Reg.No.TN-36-J-7689 came at high speed in the opposite direction dashed against the motor cycle, which the Petitioner was riding,

resulting in his fall from the two wheeler causing him multiple grievous injuries and fracture. The Petitioner suffered bone fracture below the knee in his right leg and also fracture in his right hand finger. The Petitioner took treatment in different hospital and as inpatient in a private hospital at Erode from 22.12.2014 to 06.01.2015. He underwent operation in his right hand fingers. The Petitioner is taking treatment as out patient till the date of filing of petition. The petitioner was aged 35 years at the time of the accident and by working as driver in a private concern was earning Rs.15,000/- per month. Due to the injury suffered by him, he is unable to attend to his driving work. The movement of his right knee and right hand finger are affected and consequently he is unable to do his driving work and hence seek a sum of Rs.5,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. Opposing the claim of the petitioner, by filing counter, the 3rd respondent insurance company disputed the claim of the petitioner about the manner in which the accident occurred and the injuries suffered by the petitioner. The petitioner drove his vehicle without valid licence and his negligence alone caused the accident. The petitioner also contributed to the accident. The owner and insurer of motor cycle bearing Reg.NoTN-56-7968 driven by the petitioner are necessary parties. The failure to implead them is fatal to the claim of the petitioner. The claim of the petitioner is exorbitant. The 3rd respondent is not liable to pay any compensation. Thus, the 3rd respondent sought for dismissal of the petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and produced documents Ex.P.1 to Ex.P.15. While no oral and documentary evidence was let in by the respondent, Ex.C.1 disability certificate was marked by counsel. On a careful analysis of evidence on record, the Tribunal found that the negligence of the 1st respondent vehicle driver alone was the cause for the accident and passed award for a sum of Rs.5,37,400/- payable by the respondents. Aggrieved over the said finding, the 3rd respondent/Insurance Company has come forward with the present appeal.

5. The learned counsel for the appellant/3rd respondent/insurer contends that the Tribunal wrongly applied multiplier method and awarded compensation to the Petitioner who suffered only 30% temporary disablement. As the petitioner has not suffered any permanent disability, there is no need to apply multiplier method. The amount awarded under other heads is also exorbitant. Thus, the petitioner sought for setting aside the award passed by the Tribunal by allowing the appeal.

6. Per contra, the learned counsel for the Petitioner/claimant contends that the Petitioner being a driver by profession the injuries suffered by him in his right knee and right hand finger will result in his total loss of earning power. Thus, the Petitioner/claimant contends that the Tribunal is justified in adopting multiplier method in awarding compensation. The learned counsel for the Petitioner relying upon Ruling reported in (2014) 14 SCC 391 [G.Dhanasekar Vs. Managing Director, Metropolitan Transport Corporation Limited] and 2015 (1) TN MAC 321 (SC) [Jakir Hussein Vs. Sabir and others], contended that the injured being a driver and his livelihood is earned by working as a driver, the Tribunal is justified in adopting multiplier method for the disability suffered by him and awarded just and fair compensation. Thus the petitioner/claimant sought for dismissal of the appeal.

7. This is only quantum appeal. Both sides have not raised any objection or advanced any argument regarding the conclusion arrived at by the Tribunal that the negligence of the 1st respondent alone caused the accident. As such, the conclusion of the Tribunal is based on P.W.1 evidence as well as Ex.P.1-FIR, Ex.P.2-Observation Mahazar, Ex.P.3-Rough Sketch and Ex.P.8-Final report filed by the Police implicating the driver of the 1st respondent vehicle as offender and he alone caused the accident is on proper appreciation of facts and materials available on record. Since the said finding is not challenged by either side, the same is confirmed.

8. The Petitioner claims that he was aged 35 years at the time of the accident and was working as a driver with private car owners in Perundurai, Erode Town. There is no material produced by the Petitioner regarding his monthly earnings but the Petitioner has produced his driving licence as Ex.P.15. It is clear from the same that the Petitioner knows driving, but there is no material on record to prove that he was employed as a driver and making his livelihood by working as driver.

9. The Petitioner states that he suffered injuries below right knee and right hand finger. The Petitioner having taken first aid treatment at Government Hospital, Erode, went to SR Hospital, Perundurai and thereafter took treatment as inpatient in Harini Hospital from 22.12.2014 to 06.01.2015. The Petitioner states that he underwent surgery in his right leg and right hand finger and plate was fixed during surgery. The Petitioner produced copy of the accident registered as Ex.P.6 and copy of wound certificate as Ex.P.7. The Petitioner failed to examine any medical expert and failed to produce disability certificate issued by any of the doctors who treated him. However, the Petitioner was examined by the medical Board as per the direction of this court as evidenced in the impugned order passed by the Tribunal and the certificate issued by the

District Medical Board is marked as Ex.P.7 by consent of both sides. It is evident from the same that the Petitioner suffered 30% disability. Thus there is nothing on record to show that the petitioner suffered any permanent disability. There is no medical evidence let in by the Petitioner to substantiate the claim of functional disability suffered by him. As such, the contention of the 3rd respondent/Insurance company that the fracture suffered by the Petitioner is only temporary in nature and the same will not hamper the petitioner from carrying on his driving work is not refuted by the Petitioner with any contra evidence. In the absence of any medical expert evidence and certificate to show that the petitioner is suffering from permanent disability and due to the injury suffered in the accident his functional ability is affected, it will not be appropriate to apply multiplier method to assess the loss of income of the injured petitioner. Further as stated earlier, there is nothing on record to show that the petitioner was working as a driver in private concern. The petitioner has not stated anything about the person with whom he was employed and about his monthly income with any supporting material. As such, the contention of the 3rd respondent/insurance company that the petitioner has not suffered any functional disability and therefore, there is no need to apply multiplier method to calculate the damage suffered by the petitioner is just and proper and the conclusion of the Tribunal on that aspect is liable to be set aside.

10. Admittedly the petitioner has suffered fracture and the Medical Board as per Ex.C.1 certificate stated that the the petitioner suffered temporary disability and assessed 30% temporary disability. Hence, it is appropriate to award compensation of Rs.3000/- per percentage of disability and thus Rs.90,000/- is awarded under the head "Partial permanent disability". The Petitioner claims that he is a driver by profession and he is unable to attend to any work after the injury suffered by him. He has suffered fracture and also took treatment as inpatient. Ex.P.1-discharge summary proves the same. Considering the fracture suffered by him, the petitioner would have found it difficult to do driving work atleast for ten months. Considering the period of treatment undergone by the Petitioner and his claim that he is a driver, it is assumed that he would have earned Rs.8000/- per month and as he would have been prevented from doing his work as driver for a period of 10 months, sum of Rs.8000/- x 10 months =Rs.80,000/- is awarded under the head loss of income during the period of treatment and rehabilitation. As stated above, the Petitioner having failed to prove that he suffered functional disability, the Tribunal is not justified in providing compensation by adopting multiplier method and award of Rs.3,24,000/- towards loss of earning power and therefore, the same is set aside.

11. Admittedly, the petitioner has suffered fracture in his right leg and right hand finger, which would have prevented him from doing his normal work. Hence towards loss of amenities, Rs.50,000/- is provided by this court. Likewise, for the pain and suffering undergone by the Petitioner consequent to the injuries suffered in the accident, a sum of Rs.50,000/- is provided. The Petitioner has produced Ex.P.12, Ex.P.14 medical bills and stated that he incurred Rs.75,000/- towards medical expenses. The Petitioner also stated that he is in need of Rs.50,000/- towards future medical expenses. It is evident from Ex.P.12 and Ex.P.13 medical bills that the petitioner incurred a sum of Rs.52,300/- and Rs.22,105/- towards medical expenses. As such, the petitioner has incurred some amount towards medical expenses. Hence, the petitioner is entitled to Rs.75,000/- only. There is nothing on record to show that the petitioner is in need of future medical expenses. Considering the nature of injury and the treatment undergone by him as inpatient for some period and as outpatient till the date of filing of claim petition, it will be appropriate to award Rs.20,000/- towards attender charges and Rs.20,000/- towards Extra nourishment. Even on the date of filing of claim petition, it is stated that the petitioner is taking treatment as outpatient and hence it is appropriate to award Rs.15,000/- towards Transport Charges.

12. In view of the foregoing discussion, the modified award amount is as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Transport expenses	4,000/-	15,000/-
2.	Extra nourishment	6,000/-	20,000/-
3.	Medical expenses	73,400/-	75,000/-
4.	Pain and suffering	40,000/-	50,000/-
5.	Disability	90,000/-	90,000/-
6.	Loss of earning power	3,24,000/-	---
7.	Loss of amenities	---	50,000/-
8.	Loss of income during the period of treatment	---	80,000/-
9.	Attender charges	---	20,000/-
	Total	5,37,400/-	4,00,000/-

13. In the result,
 (i) This Civil Miscellaneous Appeal is Partly Allowed;
 (ii) The award amount is reduced from Rs.5,37,400/- to Rs.4,00,000/-.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Appellant/Insurance company was directed by this court by order dated 13.10.2017 to deposit entire award amount while granting stay. Therefore, after satisfying the order of the award of this court, the appellant/Insurance company is at liberty to withdraw the excess sum, if any, in deposit.

(v) The Petitioner/Respondent No.1 is entitled to withdraw the award amount along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount.

(vi) No costs. Consequently connected CMP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal, Erode.

copy to

The Section Officer
VR Section, High Court, Madras

+1 cc to Mr.N.Vijayaraghavan Advocate sr 34942

+1 cc to Mr.N.Manokaran Advocate sr 35225

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