

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3128 of 2017

Saravanan Boopathi, ... Appellant/Claimant

...vs...

1.Sivamurugan,

2.Reliance General Insurance Company Ltd.,  
Rais Tower II floor,  
plot No.2054 II Avenue,  
Anna Nagar, Chennai-40.  
Respondents/Respondents

...

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 15.03.2017 made in MCOP.No.7544 of 2013 on the file of the Motor Accident Claims Tribunal/2<sup>nd</sup> Court of Small Causes, Chennai.

For Appellant : M/s.V.S.Kesavan

Respondents : Mr.S.Arunkumar for R-2  
(R-1 was set exparte in trial court, hence given up)

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal, dated 15.03.2017 made in MCOP.No 7544 of 2013 on the file of the Motor Accident Claims Tribunal/2<sup>nd</sup> Court of Small Causes, Chennai, the present appeal has been filed by the petitioner/ claimant for enhancement of the award amount.

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

3.The case of the petitioner is that on 02.08.2013 at 9.50 hours, while the petitioner was standing in front of Sangeetha Hotel in S.P.Road, a two wheeler bearing Registration No.TN22 CE 8659 which came at high speed, driven in a rash and negligent manner, hit the petitioner causing him multiple grievous injuries. The petitioner suffered fracture in his right leg. The petitioner by working as Manager in a private publication, was earning a sum of Rs.20,000/- per month. Due to injuries suffered, the petitioner is unable to attend to his normal work resulting in loss of income. Thus the petitioner seeks a sum of Rs.1,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioner, by filing a counter, the 2<sup>nd</sup> respondent contended that the accident has not taken place in the manner alleged by the petitioner. The amount claimed in the petition is highly excessive. The age, income and nature of injuries stated by the petitioner is not admitted. Hence, the respondents sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined himself as PW1, the medical expert as PW2 and produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal after analyzing all the evidence on record, found that due to the negligence and rash driving of the vehicle by the first respondent alone, the accident had occurred and passed an award for a sum of Rs.4,05,000/- payable by the respondents to the petitioner. Being not satisfied with the quantum awarded, the petitioner/claimant has come forward with the present appeal.

7. I have heard the learned counsel appearing for the appellant/petitioner and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellant/claimant contends that the Tribunal erred in awarding a very meager amount as compensation. The Tribunal ought to have taken the monthly income of the petitioner much higher and awarded higher amount as compensation. Thus the appellant seeks to enhance the award amount by entertaining the appeal.

9.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contends that the Tribunal has awarded compensation which is just and sufficient and there is no need to enhance the same. Thus the learned counsel for the 2<sup>nd</sup> respondent seeks dismissal of the appeal.

10. This is only a quantum appeal as the Insurance Company had not preferred any appeal challenging the findings of the Tribunal questioning the liability. The conclusion of the Tribunal on the issue of negligence and liability has become final.

11. The petitioner who examined himself as PW1 deposed that he suffered bone fracture on the right leg, wound debridement right leg, intramedullary interlocking nailing right tibia bone and multiple injuries. To prove the nature of injuries suffered by him, the petitioner produced Ex.P2 Discharge summary issued by Malar Hospital, Chennai, where the petitioner was admitted on 02.08.2013 and discharged on 06.08.2013. The petitioner also produced Ex.P6 continuous medical treatment documents. On perusing the same, it is clear that the petitioner has suffered multiple grievous injuries and also fracture.

12. The petitioner examined medical expert as P.W.2 and he clearly stated that the petitioner has suffered compound fracture in the right leg and other injuries as stated earlier. The Doctor further stated that the petitioner is feeling stiffness in the right leg and due to the injuries suffered his knee joint movements are restricted. Further, the petitioner is finding difficulty in walking, climbing steps and also sitting cross legged. P.W.2 Doctor, on the basis of Ex.P7 X-ray and also by examining the petitioner physically, assessed the disability suffered by the petitioner at 45% and issued Ex.P8 disability certificate.

13. There is no contrary evidence let in by the respondents to discredit the evidence of P.W.2 Doctor, however the petitioner was not treated by P.W.2 Doctor. Further, no calculation sheet was enclosed by P.W.2 Doctor along with Ex.P8 disability certificate issued by him. Considering the said factors and other attended circumstances, the Tribunal fixed the disability suffered by the petitioner at 40% instead of 45% given by P.W.2 Doctor. The said conclusion of the Tribunal is appropriate. However, there is no categorical evidence to prove any functional disability suffered by the petitioner, the Tribunal has correctly adopted the percentage method to compensate the petitioner. Thus, the disability compensation of Rs.3,000/- x 40% = Rs.1,20,000/- provided by the Tribunal is appropriate and there is no need to modify the same.

14. The Tribunal, considering the evidence and records, fixed the notional income at Rs.6,500/- per month, as the petitioner has suffered multiple fracture and taking treatment. The Tribunal has calculated two months income, as loss of income, which the petitioner finds is very low. Considering the

nature of injuries suffered, it will be appropriate to provide the petitioner five months salary as loss of income, as he could not attend his normal work for the said period. Thus, loss of income during the treatment period will be Rs.32,500/- (Rs.6,500 X 5).

15. Similarly, the Tribunal has provided Rs.5,000/- as attender charges. As the petitioner took treatment as inpatient and also undergone surgery, he would have needed the assistance of someone to carry on his normal routine work. Therefore, it will be appropriate to provide him attender charges for two months at the rate of Rs.5,000/- per month. Thus, a sum of Rs.5,000/- x 2 = Rs.10,000/- is provided under this head.

16. The Tribunal has provided Rs.20,000/- for loss of amenities. As the petitioner has suffered fracture and also other injuries which will prevent him from carrying on his normal life, it will be appropriate to provide a sum of Rs.25,000/- towards loss of amenities instead of Rs.20,000/- given by the Tribunal.

17. Considering the other aspects the amount provided by Tribunal under other heads is just and appropriate. There is no need to interfere with the same.

18. Thus the award passed by Tribunal is modified as follows:

| Sl No | Heads                           | Amount awarded by the Tribunal               | Awarded by this Court |
|-------|---------------------------------|----------------------------------------------|-----------------------|
| 1.    | Transportation, nourishment etc | 25,000.00                                    | 25,000.00             |
| 2.    | Medical Expenses                | 1,87,200.00                                  | 1,87,200.00           |
| 3.    | Future Medical Expenses         | 10,000.00                                    | 10,000.00             |
| 4.    | Attender Charges                | 5,000.00                                     | 10,000.00             |
| 5.    | Pain and Sufferings             | 25,000.00                                    | 25,000.00             |
| 6.    | Disability                      | 1,20,000.00                                  | 1,20,000.00           |
| 7.    | Loss of Income                  | 13,000.00                                    | 32,500.00             |
| 8.    | Loss of amenities               | 20,000.00                                    | 25,000.00             |
|       | Total                           | 4,05,200.00<br>(rounded up to Rs.4,05,000/-) | 4,34,700.00           |

Accordingly, the sum of Rs.4,05,000/- awarded by the Tribunal is modified and the same is enhanced to Rs.4,34,700/-.

19. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.4,05,200/- awarded by the Tribunal dated 26.07.2018 made in MCOP.No.875 of 2016 on the



file of the Motor Accident Claims Tribunal/2<sup>nd</sup> Court of Small Causes, Chennai is enhanced to Rs.4,34,700/-. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the entire award amount of Rs.4,34,700/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, 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 being made, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar (CS-IV )

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal/  
2<sup>nd</sup> Cort of Small Causes, Chennai.
2. The Section Officer, V.R. Section,  
High Court, Madras-104.

+1cc to Mr.S.Arunkumar, Advocate SR.No.50259

+1cc to Mr.V.S.Kesavan, Advocate SR.No.50128

GMV (27/09/2018)

सत्यमेव जयते C.M.A.No.3128 of 2017

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