

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.317 of 2017

C.George

...Appellant/Petitioner

vs

1.Raju Dominic
(was set exparte in the Trial court)

2.Bajaj Allianz General Insurance Co.Ltd.
Prince Towers, 5th floor
No.25/26, College Road, Nungambakkam
Chennai-600 034 ..Respondents/Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 22.09.2016 made in MACT.O.P.No.4165 of 2012 on the file of III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For appellant : : Mr.M.Swamikkannu
for Respondents : : Mr.S.Manohar for R2
R1-Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 22.09.2016 made in MACT.O.P.No.4165 of 2012 on the file of III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 03.06.2012, at about 2.30 hours, when the petitioner was walking in the Battachariyar Street, Ayanavaram, near the junction of P.E.Koil Street, a car bearing Reg.No.TN-20-AY-7252 came from behind, driven by its driver in a rash and negligent manner, dashed on the petitioner, thereby the Petitioner fell down and sustained grievous injuries. It is claimed by the Petitioner that the driver of the car is solely responsible for the accident. The 1st respondent/owner and the 2nd respondent/insurer of the car are statutorily and vicariously liable to pay the compensation. The Petitioner sought

compensation of Rs.15,00,000/-.

3. On the other hand, opposing the petition by filing counter, the 2nd respondent/Insurance Company contends that the nature of accident and the manner in which it happened is to be proved by the Petitioner. The claim of the Petitioner about his age, monthly income and employment is denied. It is stated that the petitioner has to prove with proper evidence that the 1st respondent car has been properly insured with the 2nd respondent and the car is having valid permit, fitness certificate and the driver of the car was having a valid driving licence on the date of accident. Hence, the 2nd respondent sought for 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.6. 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 awarded a sum of Rs.3,66,317/- as compensation to the petitioner/claimant. Being not satisfied with the quantum of the award, the appellant/petitioner 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 Permanent disability suffered by the Petitioner at 35% and the petitioner has sustained multiple compound and comminuted fracture in the right leg ankle for which plate and screws are fixed leading to immobility and consequent loss of earning. The Tribunal also failed to consider the medical bills submitted and also the attender charges claimed in the Petition. The amount awarded by the Tribunal is on the lower side. Hence, the Appellant/petitioner seeks to allow the appeal and sought for enhancement of the award amount as prayed for by him in the Petition.

7. Per contra, the learned counsel for the 2nd respondent contends that the accident occurred due to the negligence of the Petitioner and as such, the 1st respondent is not responsible for the accident. The award passed by the Tribunal itself is on the higher side and the same was passed on proper appreciation of the materials before it and as such no ground is made out by the Petitioner to enhance the award amount. Hence, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

8. The Petitioner who deposed as P.W.1 stated that the accident occurred due to the negligence of the 1st respondent

driver. P.W.2 doctor in his evidence has stated that on examination of the Petitioner on 29.10.2015, he assessed the disability and gave an opinion that the total disability is at 35% and also issued disability certificate to that effect which is marked as Ex.P.5. It is also stated that he has taken X-ray which is marked as Ex.P.6. The doctor assessed the disability as follows:-

“ Right leg fracture both bones;
Compound grade II Injury right leg ;
Surgery-II nail with 3 screws;
Malunion fracture of both bone left leg
calf muscles waisting R by 3 cms R 25 cms (L) 25 cms
P.T.Stiffness R knee with ROM 0-90 deg.
Difficulty in squatting and knee position. ”

The copy of the FIR is produced as Ex.P.1. It is pointed out by the Tribunal that it is evident from Ex.P.1-FIR that Police registered a criminal case against the driver of the car bearing Reg.No.TN-20-AY-7252. The Tribunal further observed that if it is true that the petitioner was the cause of the accident, the 1st respondent would have lodged a Police complaint against the petitioner, but FIR is registered against the driver of the 1st respondent car. It is also stated that on the date of accident, the 2nd respondent is the insurer of the 1st respondent vehicle and the insurance policy was subsisting on the date of the accident. In such circumstances, coupled with the evidence of P.W.1 and Ex.P.1-FIR, it is clearly established that the negligence of the 1st respondent driver alone caused the accident. The finding of the Tribunal to that effect is perfectly in order and needs no interference.

9. The petitioner/claimant who deposed as P.W.1 stated that the injuries sustained by him is grievous in nature; there is a fracture of both bone in the right leg and surgery was done during the course of treatment. P.W.2 doctor after examining the petitioner on 29.10.2015 assessed the disability and issued disability certificate which is marked as Ex.P.5, wherein, it is opined that the petitioner's disability is 35%. The learned counsel for the appellant/petitioner contended that as the petitioner suffered both bone fracture in the right leg and there is malunion of bones even after surgery, there is difficulty in squatting and as such the petitioner's partial permanent disability assessed at 35% should be compensated with Rs.3000/- per percentage of disability. He further submitted that while the Tribunal has fixed the monthly income at Rs.7,500/- per month, the whole treatment period of 6 months should have been taken into account for calculating the loss of income during the period of treatment. It is further contended that a very nominal amount has been awarded towards Attender charges, Transport expenses, Extra nourishment and also prayed

for awarding a reasonable compensation towards loss of amenities.

10. According to P.W.2/ doctor, the petitioner suffered 35% disability and the certificate issued by him is Ex.P.5. Considering the nature of injury stated by the petitioner as well as the evidence of P.W.3 doctor, it is apparent that the bones in the right leg are affected and he finds it difficult in squatting and unable to kneel down. However, the Tribunal fixed the disability of the petitioner at 30%. The learned counsel for the appellant/petitioner contends that in the absence of any contra evidence, the Tribunal is not justified in reducing the disability fixed by doctor. In support of the same, he relied upon the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] wherein, it is held as follows:-

"P.W.2 doctor determined the disability at 35%. However, the Tribunal without any contra evidence reduced the same to 30% and awarded a sum of Rs.90,000/- towards disability. The said reduction is unwarranted in the absence of any contra-evidence of Experts and hence, this court redetermines the disability at 35% and awards a sum of Rs.1,05,000/- towards disability."

The learned counsel for the Appellant/Petitioner also relied upon another decision reported in 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], wherein, it is held as follows:-

"14. Merely because the disability certificate has been issued after three years from the date of accident, it cannot be concluded that the assessment made by the doctor as excessive. Considering the nature of injuries, the surgeries underwent by the appellant, this court is of the view that the reason assigned for reducing the percentage of partial and permanent disablement, cannot be accepted and therefore, this court deems it fit to restore the extent of disablement assessed by P.W.3 doctor to 40% and following the decision in M.D. TNSTC Ltd., S.Kannappan, 2007 (2) TNMAC 1 ; and Prahalath Jasmathiya Vs. V.Sankaran, 2009 (5) MLJ 1549 (Mad-NOC) awarded a sum of Rs.80,000/- (Rs.2000/- per percentage of disability.)"

Following the above said Ruling, it is clear that there is no valid reason for the Tribunal to reduce the permanent disability fixed by the doctor at 35% to 30%. This court is of the view that the evidence of P.W.2/ doctor regarding disability assessed, is not contradicted by any material by the 2nd respondent/Insurance company. Therefore, the Tribunal is not justified in reducing the disability suffered by the petitioner as 30% instead of 35% fixed by P.W.2 doctor. Hence the disability suffered by the petitioner is taken as 35% on the

basis of P.W.2 evidence. Accordingly, the award is modified by this court under the head "Partial Permanent Disability" as under:-

35% x 3000 = Rs.1,05,000/-.

The Petitioner states that due to accident and the resultant injury, he is unable to attend to his regular work for 6 months and suffered loss of income. As such, it will be appropriate to calculate the loss of earning during the period of treatment as under:-

Rs.7,500/- x 6 months = Rs.45,000/-

This court is also inclined to award reasonable amounts as compensation for the injury sustained and the consequent damages caused to the petitioner as follows:-

Pain and suffering = Rs.50,000/-

Transport expenses = Rs.15,000/-

Extra Nourishment = Rs.20,000/-

Loss of amenities = Rs.25,000/-

Attender charges = Rs.15,000/-

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 income	Rs.26,250/-	Rs.45,000/-
2	Attender charges	Rs.3,750/-	Rs.15,000/-
3	Transport to Hospital	Rs.5,000/-	Rs.15,000/-
4	Extra nourishment	Rs.10,000/-	Rs.20,000/-
5	Damage to clothing	Rs.1,000/-	Rs.1,000/-
6	Medical expenses	Rs.1,80,317.74	Rs.1,80,317.74
7	Pain and suffering	Rs.40,000/-	Rs.50,000/-
8	Damages for Mental and physical shock	Rs.10,000/-	---
9	Loss of amenities	---	Rs.25,000/-
10	Disability 30% at Rs.3000/-	30% Rs.90,000/-	35% Rs.1,05,000/-
	Total	Rs.3,66,317.14	Rs.4,56,317.74

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

(i) The award of the Tribunal is modified and enhanced to Rs.4,56,317.74 from Rs.3,66,317.14;

(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 (CS-iii)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

2.The Section Officer,
V.R.Section, High Court, Madras. (2 COPIES)

+1cc to Mr.S.MANO HAR, Advocate, S.R.No.5107

+1cc to Mr.M.SWAMIKKANNU, Advocate, S.R.No. 4800

C.M.A.No.317 of 2017

RK(CO)

TR(16/04/2018)

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