

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3186 of 2017

V.Baskar

..Appellant/Petitioner

vs

1.N.Sankar

2.Bajaj Allianz General Insurance Company
Limited, 25-26, College Road,
Nungambakkam
Chennai-6.

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 5.02.2015 made in MACT.O.P.No.193 of 2012 on the file of Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For appellant : : Mr.A.N.Viswanatha Rao
For Respondents : :
for R1 : : Notice dispensed with
for R2 : : Ms.R.Sreevidhya.

J U D G M E N T

The appellant/claimant has filed this appeal against the judgment and decree dated 05.02.2015 made in MACT.O.P.No.193 of 2012 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. On 18.11.2010 at about 9.30 hours, while the petitioner was riding the Motor Cycle bearing Reg.No.TN-19-4311 at ECR Road, a Van bearing Reg.No.TN-21-K-0218 was driven by its driver in a rash and negligent manner, hit the petitioner's motor cycle, thereby, he sustained grievous injuries. The Petitioner claimed total compensation of Rs.15,00,000/-.

3. On the other hand, the 2nd respondent/Insurance Company opposed the Petitioner's claim by stating that the driver of the first respondent's vehicle was not holding a valid driving

licence at the time of the accident and hence, they are not liable to pay any compensation. It is further stated that the amount of compensation claimed is highly excessive and sought to dismiss the petition.

4. In support of the claim, the claimant examined himself as P.W.1 and P.W.2 doctor and Exhibits P.1 to P.20 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked before the Tribunal. The Tribunal, after taking note of the oral evidence of P.W.1 and Exhibit P.1-Copy of F.I.R., held that the accident occurred only due to the rash and negligent driving of the 1st respondent offending vehicle viz., bearing Reg.No.TN-21-K-0218 and consequently, fixed the liability on the 2nd respondent/Insurance Company.

5. The Tribunal taking note of oral evidence of P.W.2-Doctor and the documentary evidence Ex.P.4-Discharge summary, held that the petitioner was treated as inpatient from 18.11.2010 to 23.11.2010 and assessed the disability of the Petitioner/injured claimant at 40%. Accordingly, for 40% permanent disability sustained by the Petitioner, aged 43 years, a sum of Rs.80,000/- has been awarded.

6. Further, the Tribunal by taking into consideration Ex.P.15-salary certificate, fixed the notional income of Rs.6,000/- and also found that the petitioner would have suffered loss of income atleast for a period of 6 to 7 months and awarded Rs.40,000/- as compensation towards "Loss of income". Towards purchase of medicines, based on Ex.P.7, awarded Rs.3,546/-. The Tribunal also granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Head	Amount granted by the Tribunal
1	Loss of income	Rs. 40,000/-
2	Transport to Hospital	Rs. 5,000/-
3	Extra nourishment	Rs. 10,000/-
4	Damage to clothing	Rs. 500/-
5	Medical expenses	Rs. 3,546/-
6	Loss of amenities	Rs. 5,000/-
7	Pain and suffering	Rs. 35,000/-
8	Disability at 40% at Rs.2000/- per percentage	Rs. 80,000/-
	Total	Rs. 1,79,046

7. Aggrieved by the said quantum of compensation arrived at by the Tribunal, the injured claimant/Petitioner has filed the present appeal. The learned counsel for the appellant/Petitioner submits that the Petitioner was working as a Sculptor on his own and unless he uses his right hand, he could not do his work. Due to the injury suffered by him, he is finding it very difficult to use his right hand and as he suffered multiple injuries, he is unable to bend his right hand. As a sculptor, he faces difficulty in carrying on his job and as such, the disability suffered by him should be fixed at 55% and not 40% as done by the Tribunal. It is further contended that the Tribunal should have awarded compensation under the head "permanent disability" as well as "loss of earning power". The Petitioner further pleads that the actual medical expenses was not awarded by the Tribunal and he did not get any reimbursement for the medical expenses and hence, the entire amount towards medical expenses should be paid by the 2nd respondent/Insurance Company. Thus the petitioner seeks to entertain the appeal and sought to refix the compensation as sought for by them.

8. Admittedly, the petitioner who was working as a Sculptor suffered multiple fracture and undergone two surgeries following the accident. The documents pertaining to Ex.P.3 to Ex.P.5 clearly establish the same. Further, it is evident from Ex.P.14 and P.15 that the Petitioner was working in a sculptor unit and was earning monthly income of Rs.10,000/-. However, as the petitioner failed to examine anyone regarding placement of orders of sculptor, the Tribunal fixed the notional income at Rs.6000/- per month. It is clear from Ex.P.18 Disability Certificate and the evidence of P.W.2 doctor that the petitioner has suffered multiple fracture and disability of 55%. P.W.2 doctor has stated that the injured petitioner is not able to use his right hand properly and the movement of the right hand is restricted. Considering the nature of the petitioner's employment, the medical expenses incurred, this court is inclined to fix the disability at 55%. It is the fact that the petitioner being the Sculptor is unable to use his right hand and it is very difficult to carry on his work. In such circumstances, the Tribunal is not right in reducing the percentage of disability and the plea of the Petitioner that 55% disability stated by P.W.2 doctor is to be entertained. Hence, the loss of income with regard to disability is calculated at the rate of Rs.3000 per percentage of disability, as follows: $\text{Rs.3000} \times 55\% = \text{Rs.1,65,000/-}$.

9. The Petitioner having suffered multiple fracture and the right hand movement being restricted, it will be appropriate to award Rs.50,000/- under the head "Pain and Suffering". The Petitioner is unable to use his right hand properly and suffering pressure and strain both physically and mentally.

Under such circumstances, under the head "loss of amenities", instead of Rs.5000/- awarded by the Tribunal, this court is inclined to fix Rs.25,000/-.

10. As far as petitioner's claim for medical reimbursement for entire amount, he has not produced final medical bills. In such circumstances, the Tribunal is right in rejecting the claim of the Petitioner in that regard.

11. It is contended by the Petitioner that Plate is fixed at the time of surgery and it has to be removed and he has produced Ex.P.17 Estimation of Plate removal. It is seen that the petitioner has not examined the doctor or staff of the hospital concerned who issued the said estimation certificate and on the aspect of necessity of removal of plate. In such circumstances, the Tribunal is correct in rejecting the claim of the Petitioner for future medical expenses. In any event, considering the medical expenses already incurred by the petitioner, surgeries undergone and the nature of work viz., sculptor, definitely, the petitioner would have incurred some expenses towards attender charges. Therefore, this court is inclined to award Rs.10,000/- under the head "attender charges".

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs. 40,000/-	Rs.40,000/-
2	Transport to Hospital	Rs. 5,000/-	Rs.5,000/-
3	Extra nourishment	Rs. 10,000/-	Rs.10,000/-
4	Damage to clothing	Rs. 500/-	Rs.500/-
5	Medical expenses	Rs. 3,546/-	Rs.3546/-
6	Loss of amenities	Rs. 5,000/-	Rs.25,000/-
7	Pain and suffering	Rs. 35,000/-	Rs.50,000/-
8	Disability at 55% at Rs.3000/- per percentage as modified by this court	Rs. 80,000/-	Rs.1,65,000/-
9	Attender charges	---	Rs.10,000/-
	Total	Rs. 1,79,046/-	Rs.3,09,046/-

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

- (i) The award of the Tribunal is modified to Rs.3,09,046/- from Rs.1,79,046/-.
- (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 award amount, the 2nd respondent/Insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) There will be no order as to costs in this appeal.

Sd/--

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The III Judge, Court of small causes,
The Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.A.N.Viswanatha Rao, Advocate sR.No.2466

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.3497

C.M.A.No.3186 of 2017

SVI (CO)

sm:12.2.2018

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