

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.686 of 2018

Anburaj

..Appellant/Petitioner

Vs.

1.R.Sithanthan

2.ICICI Lombard General Insurance Company
No.84/85, Walltax Road, Chennai-3

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 17.11.2014 passed in M.C.O.P.No.2814 of 2013 on the file of Motor Accidents Claims Tribunal, III Small Causes Court at Chennai.

For appellant : : Mr.K.Ayyadurai

For Respondents : : Ms.R.Sreevidhya, for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 17.11.2014 passed in M.C.O.P.No.2814 of 2013 on the file of Motor Accidents Claims Tribunal, III Small Causes Court at Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 05.08.2008 at about 19.30 hours, while the petitioner was walking along Dr.Kalaingar Karunanidhi Street, Tharamani, Chennai, a Motor Cycle bearing Reg.No.TN-07-AQ-2954 came at high speed, dashed against the petitioner who was walking on the left extreme side of the road, causing him head injury. The accident occurred only due to negligence of the said two wheeler rider. The Petitioner suffered total loss of vision in his left eye. At that time, the petitioner was studying in 7th standard and he was aged 12 years. Due to the injury suffered, his studies is affected. Thus, the petitioner sought for a sum of

Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petitioner, the 2nd respondent Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The 1st respondent has not informed the insurer about the accident. The offending vehicle was not insured with the 2nd respondent and as such, they are not liable to pay compensation. The accident occurred only due to negligence of the minor petitioner, who suddenly crossed the busy road, without caring for the oncoming traffic. The amount claimed by the Petitioner is excessive. Thus, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the father of the minor petitioner deposed as P.W.1 and the medical expert who assessed the disability suffered by the Petitioner deposed as P.W.2. The Petitioner produced documents Ex.P.1 to Ex.P.7 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, after analysing the evidence available on record, found the negligence of the 1st respondent vehicle rider alone caused the accident, passed an award for a sum of Rs.8,85,500/- payable by the respondents to the petitioner. Being not satisfied with the quantum of the award, the Petitioner/claimant has come forward with the present appeal.

5. The learned counsel for the Petitioner/Appellant contends that as the minor petitioner suffered permanent disability, multiplier method has to be adopted, but the Tribunal fixed the notional income of the petitioner very low and failed to provide for proper monetary relief. The Petitioner lost total vision in his left eye and he is in vegetative condition. As such, the amount awarded by the Tribunal is very low. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

6. Per contra, opposing the claim of the petitioner/appellant, the 2nd respondent-Insurance company contends that only due to the negligence of the petitioner, who suddenly crossed the road, without noticing the oncoming vehicle, the accident occurred. As such, negligence of the 1st respondent driver is not the cause for the accident. The 2nd respondent is not liable to pay any compensation. Thus, the 2nd respondent sought for dismissal of the appeal.

7. The father of the minor petitioner who deposed as P.W.1 stated about the accident which took place on 05.08.2008 at

about 19.30 hours. The Police also registered Ex.P.1-FIR against the rider of the motor cycle bearing Reg.No.TN-07-AQ-2954. The contents of Ex.P.1-FIR corroborates the oral evidence of P.W.1 the father of the minor petitioner. On the side of the respondents, neither oral nor documentary evidence was produced to contradict the claim of the petitioner. As such, the conclusion of the Tribunal that the negligence of the 1st respondent vehicle driver alone caused the accident is just and proper and the same needs no interference.

8. The petitioner contends that he suffered complete loss of vision in the left eye and also suffered head injury due to which his future prospects is affected. The petitioner who was aged 12 years and was studying in 7th standard is unable to continue his education which would definitely affect his future prospects. The petitioner underwent treatment as inpatient in the Government Hospital, Egmore, and the same is evidenced by Ex.P.2-Discharge summary, which shows that from 06.08.2008 to 27.08.2008, the petitioner was treated as inpatient for the injury suffered in his left eye. Ex.P.3 is the Accident Register copy. Ex.P.4 is the Wound certificate issued to the petitioner. It is clear from Ex.P.5 that the petitioner underwent treatment for his left eye in the Sankara Nethralaya Hospital. The doctor who examined the minor petitioner and assessed the disability, deposed as P.W.2 and according to him, the petitioner has suffered total loss of vision in his left eye. He assessed the disability suffered by the petitioner at 40% and produced Ex.P.7 Disability certificate issued by him. The petitioner also produced Ex.P.6 Photo and C.D. to show the injury suffered by him. There is no contra evidence let in by the respondents to disprove the evidence put forth on the side of the petitioner.

9. The Tribunal, after analysing the oral evidence of P.W.2 doctor as well as P.W.1 father of the minor petitioner fixed disability suffered by the petitioner at 40% and applied the multiplier method. The Tribunal after fixing the notional income of the petitioner at Rs.15,000/-, by applying multiplier method, awarded a sum of Rs.90,000/- towards 40% Permanent disability suffered by the petitioner. Aggrieved over the same, the appellant/petitioner contends that the Tribunal ought to have provided higher amount towards loss of earning capacity. In support of the same, the learned counsel for the Petitioner relied on the following Rulings:-

(1) 2015 (2) TN MAC 301 [Minor Tamizhmeena @ Meena, rep. By guardian Vs. TNSTC Ltd., Division-I, Villupuram.

(2) 2014 (2) TN MAC 6 (SC) [V.Mekala Vs. M.Malathi and another]

In the above cited case, the injured suffered amputation of the leg. However, in the case on hand, it is loss of vision suffered by the petitioner in his left eye. As such, considering the fact that the petitioner was doing 7th standard and aged 12 years, in the absence of any certificate regarding his present status of education being produced before this court, it will be appropriate to award him compensation for the loss of vision in his left eye, which would prevent him from undergoing education properly by fixing the notional income of the minor petitioner at Rs.7000/=. As the petitioner was aged 12 years at the time of the accident, it will be appropriate to add 40% towards future prospects and the multiplier to be applied is 15. Accordingly, the loss of income due to disability is calculated as follows:-

Monthly salary- 7000

Add : 40% towards future prospects (2800)

7000 + 2800 = Rs.9800

9800 x 12 x15 x40/100 = Rs.7,05,600/-.

Thus, a sum of Rs.7,05,600/- is awarded under the head "Loss of earning due to Permanent disability". Considering the fact that the petitioner suffered loss of vision in his left eye and consequential disability, it will be appropriate to enhance the compensation to Rs.1,00,000/- from Rs.50,000/- under the head "Pain and suffering". Considering the fact that the minor petitioner has lost one eye vision which will affect his capacity to undergo studies and marital status, a sum of Rs.1,50,000/- is awarded towards "loss of marital prospects" and disfigurement. Further, the tribunal awarded Rs.3,00,000/- not only for loss of marital status but also loss of social prospects and the same is unsustainable. Hence, the same is also set aside. The award passed by the tribunal is modified as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this court
1.	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
2.	Extra Nourishment	Rs. 25,000/-	Rs. 25,000/-
3.	Damage to clothing	Rs. 500/-	Rs. 500/-
4.	Medical expenses	Rs. 20,000/-	Rs. 20,000/-
5.	Loss of amenities	Rs. 20,000/-	Rs. 30,000/-
6.	Loss of social status	Rs.2,00,000/-	---
7.	Loss of marital status	Rs.1,00,000/-	Rs.1,50,000/-
8.	Disfigurement	Rs. 50,000/-	---

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this court
9.	Loss of future prospects	Rs.3,00,000/-	---
10.	Pain and suffering	Rs. 50,000/-	Rs.1,00,000/-
11.	Mental shock and agony	Rs. 25,000/-	---
12.	Permanent disability	Rs. 90,000/-	Rs.7,05,600/-.
13.	Attender charges	---	Rs. 10,000/-
	Total	Rs.8,85,500/-	Rs.10,46,100/-

10. In the result, the Civil Miscellaneous Appeal is allowed. The Petitioner viz., Anburaj, is entitled to Rs.10,46,100/- as award amount. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Since the appeal is filed with delay of 923 days, the appellant/petitioner is not entitled for interest for the enhanced award amount for the said period. The 2nd respondent/Insurance company is directed to deposit the above modified enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. The Appellant/Petitioner is directed to pay the required court fee for the enhanced award amount within one week from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

2. The Section Officer,
V.R.Section, High Court, Madras.

+2ccS to Mr.K.Ayyadurai, Advocate, S.R.No.29743

C.M.A.No.686 of 2018

MG (Co)

CS/14/06/18