

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.751 of 2018

E.Sambasivam

..Appellant/Petitioner

Versus

1.N.Devanandan

2.Bajaj Allianz General Insurance Company
Limited, Prine Towers, 4th Floor,
25-26, College Road, Nungambakam,
Chennai - 6.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2014 made in M.C.O.P.No.160 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Mr.J.Michael Visuvasam [for R2]

JUDGMENT

The petitioner/claimant has filed this appeal against the judgment and decree dated 28.11.2014 made in M.C.O.P.No.160 of 2012 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

2. With the consent of both the parties, the matter is taken up for final disposal at the time of admission stage itself.

3. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioner/claimant is that on 02.12.2011 at about 17.00 hours, while the petitioner/claimant was riding his motorcycle bearing Registration No.TN-20-AH-2373 from Thiruvallur to Thirunindravur and while going near

Sevvapettai Village School, a van bearing Registration No.TN-18-7169 came at high speed dashed against the two wheeler, in which the petitioner/claimant was proceeding, causing him fracture in his right thigh and multiple grievous injuries all over his body. The accident occurred due to negligence of the 1st respondent van driver only. The petitioner/claimant who was aged 45 years and working as a bus driver in a private University, was earning Rs.9,500/- per month. Due to the injury suffered, he is unable to attend to his normal work. Hence, the petitioner/claimant sought for a sum of Rs.12,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner/claimant. The 1st respondent van was not insured with the 2nd respondent/Insurance Company. The driver of the van did not possess valid driving license, the accident occurred only due to the negligence of the petitioner/claimant. The claim regarding age, avocation and income of the petitioner/claimant is denied. As the driver of the 1st respondent van was not the cause for the accident, the 2nd respondent/Insurance Company is not liable to pay any compensation. Hence, the 2nd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioner/claimant examined himself as P.W.1 and also P.W.2 and P.W.3 were examined. He produced documents Exs.P.1 to P.13 to prove his claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal after analysing the evidence on record, found that the negligence on the part of 1st respondent - van driver alone had resulted in the accident and passed an Award for a sum of Rs.2,33,763/- payable by the respondent to the petitioner/claimant. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the present appeal.

7. The learned counsel for the petitioner/claimant contends that the Tribunal failed to consider the fact that the petitioner/claimant sustained fracture shaft of right femur and multiple injuries all over the body and took treatment as inpatient, which affected his working capacity. The Tribunal instead of applying multiplier method for computing future loss of earning, did not provide for any amount in that regard. The amount awarded under various heads is very low. Hence, the petitioner/claimant sought for enhancement of the award amount by allowing the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the accident

occurred due to negligence of the petitioner/claimant and as such, he is not entitled for any compensation. The petitioner/claimant has not suffered any functional disability. There is no evidence to show that he suffered loss of income. The award passed by the Tribunal itself is on the higher side. There is no need to enhance the quantum of the award. Hence, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

9. The appeal is filed in respect of quantum alone. There is no cross objection of the appeal filed by the respondent. As such, the conclusion arrived at by the Tribunal about negligence is not challenged and the same has become final. The Tribunal, on the basis of oral evidence of P.W.2 and Ex.P.1 - F.I.R found that the negligence of the 1st respondent-van driver alone had caused the accident as stated above. The said conclusion is not questioned by either of the parties. Thus, on the said basis, the respondents who are the owner and insurer of the van bearing Registration No.TN-17-7169 are liable to pay compensation.

10. The petitioner/claimant stated that he suffered fracture in his right thigh and grievous injuries all over his body. He took treatment as inpatient in G.H, Chennai and also in Sri Ramachandra Hospital, he took treatment from 15.12.2011 to 25.02.2011, as per Ex.P.3 - Discharge summary. It is clear from the same that he suffered fracture shaft of right femur. It is clear from Ex.P.10 - Photos that the petitioner has suffered severe injury. The Doctor of the hospital where the petitioner/claimant underwent treatment had deposed as P.W.2 and produced the copy of case sheet as Ex.P.11.

11. According to P.W.2 - Doctor, the fractured bones of the petitioner have malunited and the petitioner/claimant still walks with a limp and finds difficulty in climbing steps and sitting down on the ground. According to P.W.3, he found stiffness in the right knee of the petitioner/claimant and shortening of right femur. On the basis of physical examination of the petitioner, P.W.3 fixed the disability at 45%. In the absence of any contra evidence, the Tribunal accepted the same and there is no reason to interfere with the said conclusion. Thus, the disability suffered by the petitioner/claimant is fixed at 45%. Considering the nature of injury it will be appropriate to compensate him at Rs.3000/- per percentage, even though the petitioner/claimant sought for compensation by adopting multiplier method. Hence, the disability compensation is calculated as under:-

$$\text{Rs.3,000} * 45 = \text{Rs.1,35,000/-}$$

12. The petitioner/claimant states that he was earning Rs.9,500/- per month by working as bus driver. However, there is no proof for the same. He produced his Identity Card as Ex.P.8,

which clearly shows that he was employed in the Sathyabama University, Chennai. Being a bus driver, it will be appropriate to fix his monthly income at Rs.7,500/- instead of Rs.6,000/- as fixed by the Tribunal. Having suffered shaft of right femur of fracture, the petitioner would not have attended to normal driving work at least for 8 months. Hence, the loss of income in the treatment period is calculated as follows:-

$$\text{Rs.7,500} \times 8 = \text{Rs.60,000/-}$$

13. The petitioner/claimant having suffered shaft of right femur and also having difficulty in climbing, sitting down as stated by P.W.3 - Doctor, it will be appropriate to provide for loss of amenities by awarding Rs.25,000/- instead of Rs.5,000/- given by the Tribunal.

14. The Tribunal has awarded different amounts under various other heads and the same appears to be nominal which needs no interference. Hence, the same is confirmed.

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

Sl. No.	Head	Amount granted by the Tribunal (in Rs)	Amount awarded by this Court (in Rs)
1	Loss of disability	90,000.00	1,35,000.00
2	Attender Charges	9,000.00	9,000.00
4	Pain and Suffering	40,000.00	40,000.00
5	Loss of Amenities	5,000.00	25,000.00
6	Transportation	10,000.00	10,000.00
7	Extra nourishment	15,000.00	15,000.00
8	Medical expenses	14,263.00	14,263.00
9	Loss of income	50,000.00	60,000.00
10	Damages of Clothes	500.00	500.00
11	Total	2,33,763.00	3,08,763.00

16. In the result,

(i) The amount awarded by the Tribunal is enhanced to Rs.3,08,763/- from Rs.2,33,763/-.

(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 enhanced 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 judgment.

(iv) On such deposit, the petitioner/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) Petitioner/claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

(vi) In view of the order of this court passed in C.M.P.No.13055 of 2017 in C.M.A.SR.No.61234 of 2017, the petitioner/claimant shall forego interest for the delayed period.

No costs.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

bri

To

1.The III Judge,
Court of Small Causes,
Chennai.

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

+lcc to Mr.A.M.Viswanatha Rao, Advocate SR.No.24273
+lcc to Mr.J.Michael Visuvasam, Advocate SR.No.29440

C.M.A.No.751 of 2018

KS (CO)
GN(17/07/2018)