

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.745 OF 2017

S.Dasarathan

...Appellant/Petitioner

...vs...

1. V.Thangaraj

2. The Oriental Insurance Co. Ltd.,
No.251, I Floor, Opp. to Ram Theatre stop.
Arcot Road, Vadapalani,
Chennai-600 026. ...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 10.02.2014 made in MCOP.No.616 of 2008 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

For Appellant : Mr.P.T.Saleem Fathima
For Respondents : Mr.J.Chandran for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 10.02.2014 made in MCOP.No.616 of 2008 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of 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 09.03.2007 at about 7.00 p.m., while the petitioner was proceeding in the two wheeler bearing Registration No.TN-09-X-3972, from North to South near Koyambedu Market "E" Gate, the goods auto bearing Registration No.TN-10-F-3688, came in the opposite direction at high speed dashed against the two wheeler in which the petitioner was proceeding causing him grievous injuries all over

his body. The accident occurred due to the rash and negligent driving by the first respondent's vehicle driver. At the time of the accident, the petitioner was aged about 38 years and he was employed as Operator in Addison Company earning a monthly salary of Rs.15,000/-. Due to the injuries suffered, he is unable to attend to his normal work. Hence, the petitioner seeks a sum of Rs.6,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the age, avocation and income of the petitioner as alleged in the petition is not correct. The accident does not occur in the manner alleged by the petitioner. It is not correct to say that the negligence of the first respondent vehicle driver alone caused the accident. It is only the petitioner driving his motor cycle bearing Registration No.TN-09-X-3972 came at high speed without following the traffic rules dashed against the first respondent goods vehicle resulting in the accident. The claim of the petitioner about the injuries suffered by him is not correct. He suffered only simple injuries. The claim of compensation by the petitioner under different heads is exorbitant. Thus, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical experts were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P19 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent goods vehicle driver alone caused the accident, passed award for a sum of Rs.25,000/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant/petitioner contends that the Tribunal after fixing the entire negligence on the part of the first respondent driver as the cause for the accident failed to provide just and fair compensation to the petitioner. The Tribunal failed to appreciate the medical evidence properly. The Tribunal without

any basis failed to provide for just compensation to the petitioner. Thus, the petitioner seeks to entertain the appeal and enhance the quantum of award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the accident occurred only due to the negligence of the petitioner himself and as such the claim of the petitioner is not maintainable. The injuries suffered by the petitioner is only simple in nature and as such the compensation awarded by the Tribunal is just and fair. Hence, there is no need to interfere with the award passed by the Tribunal. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10. The petitioner who suffered injuries in the accident deposed as P.W.1 and stated that the accident occurred only due to the rash and negligent driving by the driver of the first respondent goods vehicle. He also produced Ex.P1 First Information Report, which has been laid against the driver of the first respondent goods vehicle only. The respondents has not let in any contra evidence to disprove the version of the accident given by P.W.1. In such circumstances, taking in to consideration the oral evidence of P.W.1 as well as Ex.P1 First Information Report, it is clear that the negligence of the first respondent goods vehicle driver alone caused the accident.

11. Admittedly, the offending vehicle bearing Registration No.TN-10-F-3688 belongs to the first respondent and the same was insured with the second respondent. As such the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation.

12. The petitioner who deposed as P.W.1 stated that he suffered grievous injuries in his head and fracture in the lower portion of left thigh. According to him, he underwent treatment from 09.03.2007 to 26.03.2007 in Sri Devi Hospital, Koyambedu. Subsequently, he under went surgical treatment in Bharathiraja Hospital, Chennai. Thus, the petitioner contends that due to the injuries suffered by him, he was having pain on his leg and also problem with his head. Thus, according to P.W.1, he has suffered permanent disability preventing him from carrying on his normal work. The petitioner examined two medical experts to prove the nature of disability suffered by him. While P.W.2 Doctor Saravanabhavanandham stated that due to the head injury suffered by the petitioner, he is having migraine headache subsequently. According to P.W.2 Doctor, the petitioner under went surgery in respect of left frontal fracture bone. He assessed the disability suffered by the petitioner at 60%. Likewise, the other Doctor who deposed as P.W.3 stated that the petitioner suffered fracture in the lower portion of left thigh

and a plate has been implanted in that area. The left knee cup movement is restricted to 30 degree and the petitioner found difficulty in doing works by standing for long time. He assessed the disability at 45%.

13. Further, the petitioner produced discharge summary issued by Sri Devi Hospital, Chennai as Ex.P2 and the discharge summary issued by Bharathi Raja Hospital as Ex.P4. It is clear from the said documents that the petitioner underwent treatment as inpatient in the said hospital from 21.12.2007 to 22.12.2007 and subsequently from 17.11.2009 to 21.11.2009.

14. The learned counsel appearing for the second respondent contended that the accident is stated to have taken place on 09.03.2007, but, the above said discharge summary produced by the petitioner relates to period much later and as such it cannot be concluded that the treatment undergone by the petitioner relates to the injuries suffered in the accident which took place on 09.03.2007. Admittedly, the petitioner has not produced any Accident Register Copy or any other medical records showing the injuries suffered on 09.03.2007 and the treatment taken on that date. However, the Doctor who deposed as P.W.2 and P.W.3 have stated about the injuries suffered by the petitioner on the basis of personal examination of the petitioner. It is evident from Ex.P1 First Information Report that the petitioner met with an accident on 09.03.2007. The respondents have not let in any evidence to disprove the claim of the petitioner. It is clear from the evidence of P.W.1 to P.W.3 that the treatment undergone in the hospital as per Ex.P2 to Ex.P4 was in respect of the injuries suffered by the petitioner on 09.03.2007. The petitioner also produced other medical bills as Ex.P8 and also the prescription, CT Scan report as Ex.P5, Brain and Spine operation charges bill as Ex.P6. In such circumstances, it is clear that the petitioner has suffered grievous multiple injuries which has caused him permanent disability.

15. In such circumstances, it will be appropriate to fix the permanent disability suffered by the petitioner at 60% and considering the same, it will be appropriate to compensate him at the rate of Rs.3000/- per percentage. Thus, the disability compensation is calculated as $60\% \times \text{Rs.3,000/-} = \text{Rs.1,80,000/-}$. Considering the period of treatment undergone by the petitioner and the nature of injuries suffered by him, it will be appropriate to provide Rs.30,000/- towards pain and sufferings. The petitioner claims that he was working as operator in Addison Company earning a sum of Rs.15,000/- per month. However, no proof was filed. Considering the nature of injuries suffered by him, he would not have attended to his normal work at least for three months. In such circumstances, it will be appropriate to

fix his notional monthly income Rs.6,000/- and loss of income during treatment period is calculated as Rs.6,000/- x 3 Rs.18,000/-. As the petitioner suffered severe injuries on his head and leg and he is find it difficult to attend to his normal work, it will be appropriate to award a sum of Rs.15,000/- towards loss of amenities. Further, a sum of Rs.10,000/- is granted towards Transportation charges and sum of Rs.10,000/- is granted towards extra-nourishment. Considering the nature of injuries and period of treatment as inpatient undergone by the petitioner, it will be appropriate to award Rs.10,000/- towards attender charges. Thus, the following amount is awarded by this Court under different heads.

Permanent disability	Rs.	1,80,000.00
Pain and sufferings	Rs.	30,000.00
Loss of income during treatment period	Rs.	18,000.00
Loss of amenities	Rs.	15,000.00
Transportation	Rs.	10,000.00
Extra-nourishment	Rs.	10,000.00
Attender charges	Rs.	10,000.00

Totatl	Rs.	2,73,000.00

Accordingly, the amount of Rs.25,000/- awarded by the Tribunal is enhanced to Rs.2,73,000/-

16. In the result, this appeal is partly allowed. No costs. The sum of Rs.25,000/- awarded by the Tribunal dated 10.02.2014 made in MCOP.No.616 of 2008 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai, is hereby enhanced to Rs.2,73,000/-. The second respondent Insurance Company is directed to deposit the entire enhanced award amount of Rs.2,73,000/- 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, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

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Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The VI Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

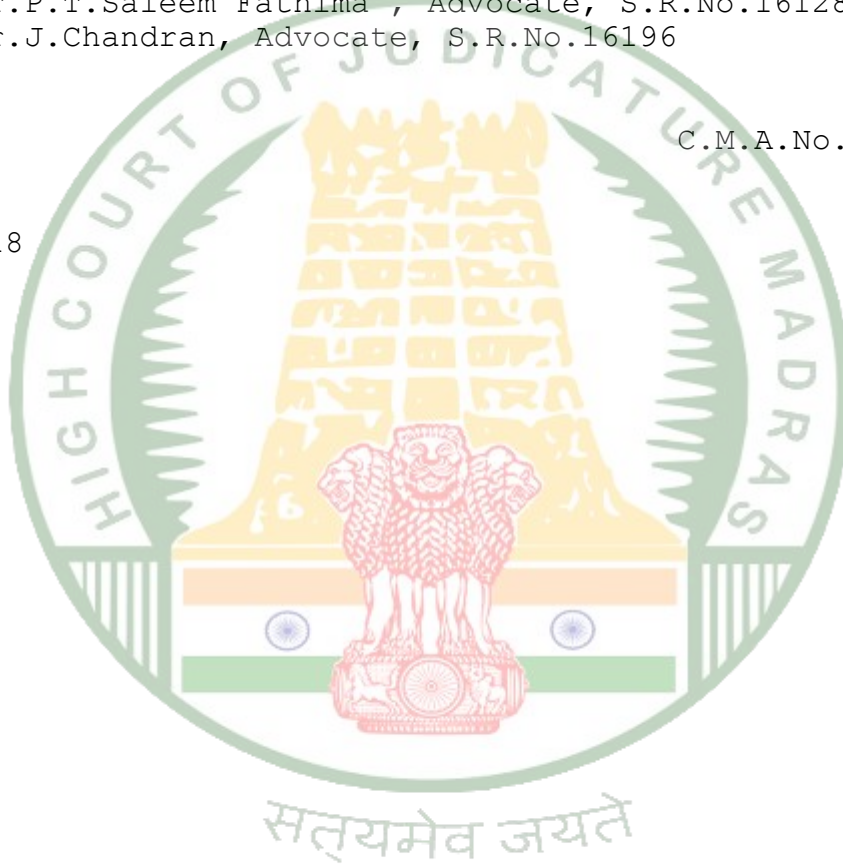
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+1cc to Mr.P.T.Saleem Fathima , Advocate, S.R.No.16128

+1cc to Mr.J.Chandran, Advocate, S.R.No.16196

C.M.A.No.745 of 2017

CP(CO)
CS/11/05/18



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