

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2018

Coram

THE HON'BLE MR. JUSTICE S. BASKARAN

C.M.A.No.833 of 2017

S.Sankaran

... Appellant/Petitioner

Versus

1.The United India Insurance Co.Ltd.,
Motor third party Claim Office,
South India Co-Op Building, IIIrd Floor,
38, Anna Salai,
Chennai - 600 002.1st Respondent/2nd Respondent

2. R. Kausalya 2nd Respondent/1st Respondent

PRAYER Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and award dated 13.08.2003 in M.C.O.P.No.1234 of 2000 on the file of the Court of the Fast track Court-V Additional District Court, Chennai.

For Appellant: :Mr. R.Manoranjitham

For Respondents :Mr.R.Srinivasa Ramalingam for R1

J U D G M E N T

The Petitioner/claimant has come forward with this appeal against the award passed by the order and award dated 13.08.2003 in M.C.O.P.No.1234 of 2000 on the file of the Court of the Fast track Court -V, Additional District Court.

2.For convenience sake, the parties are referred to hereunder according to their litigative status before the tribunal.

3. The case of the petitioner is that on 27.01.1994 at 13:30 hours while the petitioner was riding his two wheeler bearing registration No. TMA -0940 in West Tambaram-Velachery Road, the lorry bearing registration No.MDN 6051 came from the same direction in high speed and dashed against the two wheeler in which the petitioner was proceeding. In the impact, the petitioner fell down and suffered grievous injuries all over his body including fracture in his right leg. The petitioner claims that the negligence on the part of the first respondent Lorry driver alone caused the accident. At that time, the petitioner was aged 21 years old and by doing Real Estate Business, he was earning Rs.2,500/-per month. Due to injuries suffered by him, he is not able to work regularly. Hence, the petitioner seeks a sum of Rs.1,00,000/- as compensation.

4. On the other hand opposing the claim of the petitioner by filing counter, the second respondent/Insurance Company contends that the claim of the petitioner is bad for non joinder of the first respondent/lorry driver as well as the insurer of the two wheeler owned by the petitioner as respondents. The petitioner has to prove that the offending vehicle was having insurance coverage and the driver possessed valid driving license. The claim of the petitioner about the age, avocation, income of the injured petitioner is denied. The claim of the petitioner is exorbitant. Thus, the 2nd respondent seeks dismissal of the Petition.

5. Before the Tribunal, the petitioner examined himself as PW-1 and the medical Expert as PW-2 produced documents Ex.P1 to Ex.P.12 to prove his claim. On the side of the respondents, neither oral nor documentary evidences was let in. The Tribunal on the basis of available evidence on record found the first respondent vehicle driver negligence only caused the accident, passed an award for a sum of Rs.10,000/- as compensation to the petitioner. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the appellant/petitioner contends that the Tribunal failed to take into consideration the contents of Ex.P.2 which clearly mentioned about the cause of injury, the nature of injury and the relevant particulars. The evidence of PW-1 was also not considered by the Tribunal. The Tribunal awarded very nominal amount inspite of the fact that petitioner has suffered grievous injuries including fracture. Hence the appellant/petitioner seeks to entertain the appeal and to enhance the award amount.

7. Per contra, the learned counsel appearing on behalf of the second respondent/insurance company contends that the claim of the petitioner is exorbitant and no valid ground is made to entertain the appeal.. The Tribunal has correctly assessed the evidence on record and arrived at a just and fair compensation and the same needs no inference. Thus the respondents seeks for dismissal of the appeal.

8. The appeal is filed on the issue of quantum only. The issue of negligence aspect is not agitated before this forum. The conclusion arrived at by the Tribunal on the basis of Ex.P.10-FIR as well as the oral evidence P.W.1, that the driver of the first respondent vehicle alone caused the accident, due to his negligence is just and proper and the same needs no inference.

9. The petitioner who deposed as P.W.1 stated that he suffered injury on his right knee and initially, he was treated in Christudas Hospital, thereafter, he was admitted in Kumaran Hospital on 26.03.1994 and discharged on 30.03.1994 and the same was mentioned in EX.P.1 O.P.Chit. From Ex.P2-Discharge summary issued by Kumaran hospital, it is clear that the petitioner underwent treatment as inpatient from 26.03.1994 to 30.03.1994 and it was mentioned about compound fracture and other injuries suffered by the Petitioner. Likewise, the petitioner produced Ex.P.6 discharge summary of the A.G. Hospital. The petitioner examined PW-2 Doctor who assessed the disability suffered by the petitioner and issued Ex.P11 disability certificate. According to P.W.2, there is a fracture in the right leg of the petitioner and there is mal-union of the bones. According to him, stiffening of muscles also occurred and the petitioner finds difficult in walking continuously. The doctor further states that the disability suffered by the petitioner is fixed by him at 45%.

10. On a perusal of the award passed by the Tribunal, it is seen that the Tribunal, disallowed the claim of the petitioner towards loss of earnings, transport to hospital and damage to two wheeler. However, the Tribunal, after considering and analysing the evidence available on record, provided compensation under Pain and suffering and disability and in total, awarded a lump sum of Rs.10,000/-.

11. Taking into consideration the evidence of P.W.2/doctor and the injuries suffered, by the petitioner will be appropriate to fix 40% disability and provide compensation at the rate of

Rs.1500/- per percentage of disability. Accordingly, the compensation towards "disability" is as under:-

40% x Rs.1500/- = Rs.60,000/-.

12. Considering the nature of injury and the treatment underwent by the appellant/petitioner and the fact that he was unable to attend to his daily routine due to the injuries suffered in the accident and that he would have required assistance of an attender, this court is inclined to provide Rs.2,500/- under the head "Attender charges".

13. Since the appellant/petitioner is stated to be doing Real estate business and considering his claim that he was unable to attend to his avocation for four months during treatment period, it will be appropriate to fix Rs.2500/- as notional monthly income of the Petitioner/appellant and for four months, Rs.2500/- x 4 = Rs.10,000/- is provided towards loss of income by this court.

14. Considering the overall materials available on record, the nature of injury and the pain and suffering undergone by the Petitioner, the award passed by the Tribunal is modified as follows.

S1 .N o	Heads	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income during treatment period	---	Rs.10,000/-
2	Disability	Rs.5,000/-	Rs.60,000/-
3	Transport charges	---	Rs. 2,500/-
4	Medical expenses	---	Rs. 5,000
5	Attender charges	---	Rs. 2,500/-
7	Pain and suffering	Rs.5,000/-	Rs. 5,000/-
	Total	Rs.10,000/-	Rs.85,000/-

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

(i) The award of the Tribunal is enhanced to Rs.85,000/- from Rs.10,000/-

(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 1st respondent/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 four 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. As per the order of this court dated 14.02.2017 passed in CMP.No.3620 of 2016 in CMA.No.SR.63532 of 2005, interest is waived off for the delay of 219 days in filing the appeal. The Tribunal shall pass appropriate directions for the disbursement 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(CCC)

//True Copy//

Sub Assistant Registrar

smn/nvsri

To

1.The Motor Accidents Claims Tribunal,
Fast track Court -V,
Additional District Court, Chennai.

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

+1cc to Mr.Srinivasan Ramalingam, Advocate Sr.16368
+1cc to M/S.R.Manoranjitham, Advocate Sr.16133

C.M.A.No.833 of 2017

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srg 16/11/2018