

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.06.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

CIVIL MISCELLANEOUS APPEAL NO.1038 OF 2006

Oriental Insurance Co. Ltd,
Regional Office,
Post Box No.1877,
No.8,Esplanade,
Chennai - 600 108.

.... Appellant/3rd
Respondent

..vs..

1.Chidambaram
2.N.M.Mani
3.S.A.Palanisamy
4.D.Latha
5.C.L.Kaviya
6.C.L.Sowmiya

(R-4 to R-6 are brought on record as legal
representatives of the deceased first
respondent vide order of this Court dated
06.09.2010 made in M.P.No.1 of 2010)

...Respondents/Petitioners
and 1st and 2nd Respondent

Prayer:-

This Civil Miscellaneous Appeal has filed under Section 173
of Motor Vehicles Act, 1988, against the Order and Decreetal
Order dated 06.04.2005 made in MCOP.No.620 of 2001 on the file
of the Motor Accident Claims Tribunal/II Additional Sub Judge,
Erode.

For Appellant : Mr.N.Vijayaraghavan

Respondent : Mrs.P.T.Ramadevi
4 to 6

JUDGMENT

Aggrieved over the findings of the Tribunal, dated
06.04.2005 made in MCOP.No.620 of 2001 on the file of the Motor
Accident Claims Tribunal/II Additional Sub Judge, Erode, the
present appeal has been filed by the third respondent Insurance

Company to set aside the award passed by the Tribunal.

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 30.03.2001 at about 12.45 p.m., while the petitioner was riding his motor cycle bearing Registration No.TN-33-U-0544 in Erode to Perunthurai Road, while going near Easwaramoorthy Mahal, the first respondent driven Jeep bearing Registration No.TN-33-U-1064 belonging to the second respondent and insured with the third respondent, came at high speed dashed against the two wheeler, which the petitioner was riding causing him grievous injuries all over the body. The right leg of the petitioner is crushed and he suffered fracture in his right wrist and fingers. He also suffered cut injury in the right fore head and right ear. After taking treatment in the Government Hospital, Erode, he was treated as inpatient for two months in National Hospital, Erode where his right leg was amputated. The petitioner underwent two surgeries including plastic surgery. The petitioner was employed as Junior Engineer in TNEB and aged 44 years at the time of the accident, his monthly income was Rs.10,214/-. Due to the injuries suffered, his promotion opportunities affected and he is suffering from permanent disability. 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 offending vehicle.

4.On the other hand, opposing the claim petition, the third respondent Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The first respondent driven Jeep was proceeding at normal speed and while going near Easwaramoorthy Mahal, a Lorry which was coming in the opposite direction suddenly turned to the right side without any signal. In order to avoid dashing against the Lorry, the Jeep driver turned the Jeep and in that process, slightly dashed against the two wheeler of the petitioner. The said Lorry driver alone caused the accident. The claim of the petitioner about the age, monthly income, nature of injuries and other factors are disputed. Thus, the third respondent sought for dismissal of the petition.

5.Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, 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 Jeep driver

alone caused the accident, passed an award for a sum of Rs.8,59,603/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the third respondent Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant-third respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/third respondent Insurance Company contends that the Tribunal failed to take note of the evidence on record properly and fixed the annual income of the petitioner/claimant at Rs.1,20,000/- without any basis. The petitioner was working as Junior Engineer in Tamil Nadu Electricity Board and he has not suffered any loss of income or future earning capacity. The amount claimed by the petitioner is exorbitant. The interest awarded by the Tribunal is on the higher side. Thus, the third respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertain the appeal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the petitioner having suffered amputation and consequently loss of promotional opportunities and posting on the technical side resulting in loss of higher income, is entitled for compensation as sought for by him. The claim of the third respondent Insurance Company is unsustainable. Thus, the petitioner sought for dismissal of this appeal.

10. The fact that the petitioner was employed as Junior Engineer in TNEB and he met with an accident on 30.03.2001 is admitted. The claim of P.W.1 that while he was driving his two wheeler in Erode to Perunthurai main road, the first respondent driving the Jeep bearing Registration No.TN-33-U-1064, came at high speed dashed against him causing grievous injuries is not contradicted with any evidence by the respondents. The police also registered Ex.P1 First Information Report against the first respondent only. After completion of investigation, final report was laid against him as per Ex.P6 and he admitted his guilt and paid fine amount as evidenced by Ex.P7 Judgment copy which will clearly prove that the accident occurred due to the negligence of the first respondent driver only. Thus, the Tribunal, on the basis of the above said evidence, correctly concluded that the first respondent driver negligence alone caused the accident. The second respondent being the owner and the third respondent being Insurer are liable to pay compensation as the accident occurred due to the negligence of the first respondent driver.

11. It is clear from P.W.1 evidence that due to the accident on 30.03.2001, his right leg is crushed and he suffered fracture in his right wrist as well as fingers and also suffered cut injury in the right fore head and right ear. The same is evidenced by Ex.P5 AR copy. The petitioner further stated that after the accident he took treatment in Government Hospital, Erode and thereafter in National Hospital, Erode as inpatient for two months. His right leg was amputated and he underwent two major surgeries. Due to the amputation of the right leg, he has to depend on the assistance of somebody even for basic needs and he is unable to carry on his normal day to day work.

12. The Doctor, who deposed as P.W.2 stated that he has given treatment to the petitioner and he suffered fracture in his right wrist and fingers and also suffered cut injury in the right fore head and right ear. As the right leg was amputated, he fixed the permanent disability at 60% and for the fracture on the right arm, fixed disability at 10% and issued Ex.P14 disability certificate fixing the total disability at 70%. The petitioner was employed as Junior Engineer in TNEB and his monthly salary was stated to be Rs.10,214/-. As per Ex.P5 wound certificate, the petitioner was aged about 45 years. As per Ex.P19 Pay Slip, the monthly salary of the petitioner for February, 2015 was Rs.10,214/-. However, there is no evidence to show that the petitioner has suffered any de-promotion or denial of promotion in his official work. In such circumstances, keeping in mind that the petitioner suffered 60% disability, due to the right leg amputation and 10% disability due to the fracture in his right hand and the fact that he continues to work as Junior Engineer in TNEB and there is no evidence to show that he suffered loss of income. The petitioner has produced Ex.P19 Pay Slip and the same is issued for February, 2005, which is subsequent to the date of accident viz., 30.03.2001. As such, it is clear that he continued to work as Joint Engineer and getting monthly salary from TNEB. Considering the fact that the amputation has not prevented the future promotional opportunities, it will be appropriate to fix the loss of earning capacity of the petitioner at 40% instead of 70% fixed by the Tribunal. As such, the loss of future earning capacity is calculated as follows:-

$$\text{Rs.10,214/-} \times 12 = \text{Rs.1,22,568/-} \times 13 = \text{Rs.15,93,384/-} \times 40\%$$
$$= \text{Rs.6,37,353/-}$$

13. As stated above, the petitioner has suffered amputation and also underwent continuous treatment which would have caused lot of pain and sufferings to the petitioner. Then, it will be appropriate to provide Rs.40,000/- towards pain and sufferings. For loss of amenities, due to the amputation of the right leg, a sum of Rs.20,000/- is provided. A sum of Rs.10,000/- is

provided towards attender charges and a sum of Rs.10,000/- is provided for extra-nourishment. The petitioner has produced Ex.P8, Ex.P9, Ex.P10 and Ex.P16 medical bills and Doctor Bill. On the basis of the same, it is clear that a sum of Rs.1,01,603/- has been spent towards medical expenses. The petitioner is entitled for the same. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	7,28,000.00	6,37,384.00
2.	Medical Expenses	1,01,603.00	1,01,603.00
3.	Permanent disability	20,000.00	-
4.	Pain and sufferings	5,000.00	40,000.00
5.	Extra nourishment	5,000.00	10,000.00
6.	Loss of Amenities	-	20,000.00
7.	Attender Charges	-	10,000.00
	Total	8,59,603.00	8,18,987.00

Accordingly, a sum of Rs.8,59,603/- awarded by the Tribunal is modified and the same is reduced to Rs.8,18,987/-.

14. In the result. The Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.8,59,603/- awarded by the Tribunal dated 06.04.2005 made in MCOP.No.620 of 2001 on the file of the Motor Accident Claims Tribunal/III Additional Sub Judge, Erode is hereby reduced to Rs.8,18,987/-. The appellant Insurance Company is directed to deposit the entire Award amount of Rs.8,18,987/- 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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rrg

To

1. II Additional Sub Judge,
Motor Accident Claim Tribunal,
Erode.
2. The Section Officer,
VR Section, High Court,
Madras(2 Copies)

+1cc to Mrs.P.T.Ramadevi , Advocate, S.R.No.42571
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.42001

C.M.A.No.1038 of 2006

MR(CO)
CS/10/09/18



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