

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.116 of 2013

J.Selvam .. Appellant/Petitioner

..vs..

1.N.Bharat

2.ICICI Lombard General Insurance Co. Ltd.,
No.84/85, Waltax Road, Ist Floor,
Arihand Plaza, Chennai-600 033.

.... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2012 made in MCOP.No.890 of 2011 on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan
For Respondents : Mrs.R.Sree Vidhya for R-2
R1-Exparte

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal dated 16.10.2012 made in MCOP.No.890 of 2011 on the file of the Motor Accident Claims Tribunal/V 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 14.02.2011 at about 19.30 hours, while the petitioner was standing in the Ponnchery Bus Stop, ECR Road, the first respondent Maruthi Car bearing Registration No.TN-07-AT-8085 came at high speed and dashed against the petitioner causing him head injury, fracture and multiple other injuries all over his body. The petitioner who was aged 23 years was earning a sum of Rs.10,000/- per month by working as carpenter. Due to the injuries suffered by him, he

is unable to do his carpenter work resulting in loss of income to him. Thus, the petitioner sought for a sum of Rs.15,00,000/- 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 contended that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about his age, avocation and income is denied. It is not correct to say that the negligence of the first respondent vehicle driver alone caused 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-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.2 and two other witnesses was examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P15 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 vehicle driver alone caused the accident, passed an award for a sum of Rs.3,45,900/- as compensation to the petitioner. Being not 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/claimant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellant/petitioner contends that the Tribunal failed to appreciate the evidence on record properly and awarded the lesser compensation. The Tribunal ought to have fixed the monthly income of the petitioner at Rs.10,000/-, but wrongly fixed the income at Rs.4,500/-. The Tribunal failed to consider the evidence of P.W.3 Doctor who assessed the disability suffered by the petitioner at 50%. The amount awarded by the Tribunal under the different heads is very meager. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

9. On the other hand, disputing the claim of the petitioner, the learned counsel appearing for the second

respondent-Insurance Company contends that the petitioner himself contributed to the accident and as such he is not entitled for more compensation. The Award passed by the Tribunal itself is on the higher side. Thus, the second respondent Insurance Company sought for dismissal of this appeal.

10. The petitioner, who deposed as P.W.1 clearly stated about the accident which took place on 14.02.2011 at about 19.30 hours. The police have registered Ex.P1 First Information Report against the driver of the first respondent car only. The averment in Ex.P1 First Information Report and the oral evidence of P.W.1 clearly proved the manner in which the accident occurred. On the other hand, the respondent does not let in any evidence to contradict the claim of the petitioner about the manner in which the accident occurred. Thus, the conclusion of the Tribunal on the basis of P.W.1 oral evidence and the contents of Ex.P1 First Information Report that the accident occurred only due to the negligence of the first respondent car driver is just and proper and the same needs no interference.

11. The petitioner who suffered injuries in the accident stated that he took treatment as inpatient in Parvathi Hospital after the occurrence. According to the petitioner, he suffered head injury, degloving injuries in left knee and bone loss + over lateral malleolus left popliteal fossa exposing castronomies orgin contamination, left CPN neuroma at popliteal fossa and multiple injuries all over the body. It is clear from Ex.P2 and Ex.P3 Discharge Summary that the petitioner underwent treatment as inpatient at Parvathi Hospital at different points of time. It is clear from the above said discharge summary that the petitioner has suffered fracture on his left ankle and left knee. It is clear from Ex.P5 scan report that he sustained head injury, degloving injuries in left knee and injury in left ankle bone and under went treatment on 02.06.2011. Thereafter, the petitioner claims he was continuously taking treatment in Parvathi Hospital as out patient and to prove the same, produced Ex.P6 treatment records. Thus, the petitioner has suffered fracture and grievous injuries as stated above.

12. The Doctor who deposed as P.W.3 clearly stated that the petitioner suffered head injuries, degloving injuries in left knee and bone loss + over lateral malleolus left popliteal fossa exposing castronomies orgin contamination, left CPN neuroma at popliteal fossa and multiple injuries all over the body and assessed the disability at 65%. According to P.W.3, due to the injuries suffered, the petitioner find it difficult to stand and walk for long distance and to bend his left leg. Due to shortening of his left leg by two inches, the petitioner will find it difficult to do any work on his own. It is also clear from the Discharge Summary that the petitioner was advised

physiotherapy for which he has to go to hospital regularly. Thus, it is clear from the above said facts that the petitioner has suffered partial permanent disability. The Tribunal taking into consideration that the petitioner was aged 23 years, applied the multiplier 17 and fixed the monthly income at Rs.4,500/- and passed the award. However, the same is disputed by the petitioner/claimant, by contending that being carpenter, his monthly earning was Rs.8,500/-, but the same was not considered by the Tribunal. It is also pointed out that the Tribunal after accepting the evidence of P.W.3 that the petitioner has suffered 50% disability, wrongly fixed the total body disability and loss of earning capacity at 22% and the same has to be enhanced.

13. On the other hand, the learned counsel appearing for the second respondent-Insurance Company contended that there is no need to modify the monthly income or loss of earning capacity due to the disability calculated at 22% by the Tribunal, as the same is just and proper.

14. However, considering the fact that the accident occurred in 2011, and the general demand for carpenter, it will be appropriate to fix the monthly income of the petitioner at Rs.6,000/- instead of Rs.4,500/- fixed by the Tribunal. Further, it is pointed out by the learned counsel appearing for the petitioner that due to the injuries suffered in the leg as evidenced by Ex.P11 photographs with CD and Ex.P14 X-ray, the petitioner is unable to bend his leg which was prevent him from discharging his work as carpenter. In such circumstances, it will be appropriate to fix the disability causing loss of income at 35% instead of 22% fixed by the Tribunal. As the petitioner was aged 23 years, the multiplier to be applied is 17. As such the loss of earning capacity is calculated as follows:-

$$\text{Rs.6000/-} \times 35\% = \text{Rs.2,100/-} \times 12 = \text{Rs.25,200} \times 17 = \text{Rs.4,28,400/-}.$$

15. Considering the nature of injuries suffered by the petitioner, he could not have attend to his normal work at least for three months. Hence, the loss of income during treatment period is calculated as follows:- $\text{Rs.6000/-} \times 3 = \text{Rs.18,000/-}$. The Tribunal has awarded various amount under different heads and the same is appears to be proper which needs no interference.

16. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income during treatment period	13,500.00	18,000.00
2.	Transportation	10,000.00	10,000.00
3.	Extra nourishment	5,000.00	5,000.00
4.	Medical Expenses	89,397.50	89,397.50
5.	Damage to cloth	1,000.00	1,000.00
6.	Pain and sufferings	25,000.00	25,000.00
7.	Permanent disability	2,01,960.00	4,28,400.00
	Total	3,45,857.50	5,76,797.50

Accordingly, the compensation Awarded by the Tribunal is modified and the same is enhanced to Rs.5,76,797.50 and the same is rounded to Rs.5,76,800/-.

17. In the result, this appeal is allowed. No costs. The amount of Rs.3,45,857.50 awarded by the Tribunal dated 16.10.2012 made in MCOP.No.890 of 2011 on the file of the Motor Accident Claims Tribunal/V Judge, Small Causes Court, Chennai, is enhanced to Rs.5,76,800/-. The Second respondent-Insurance Company is directed to deposit the entire Award amount of Rs.5,76,800/- 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

सत्यमेव जयते

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rrg

To

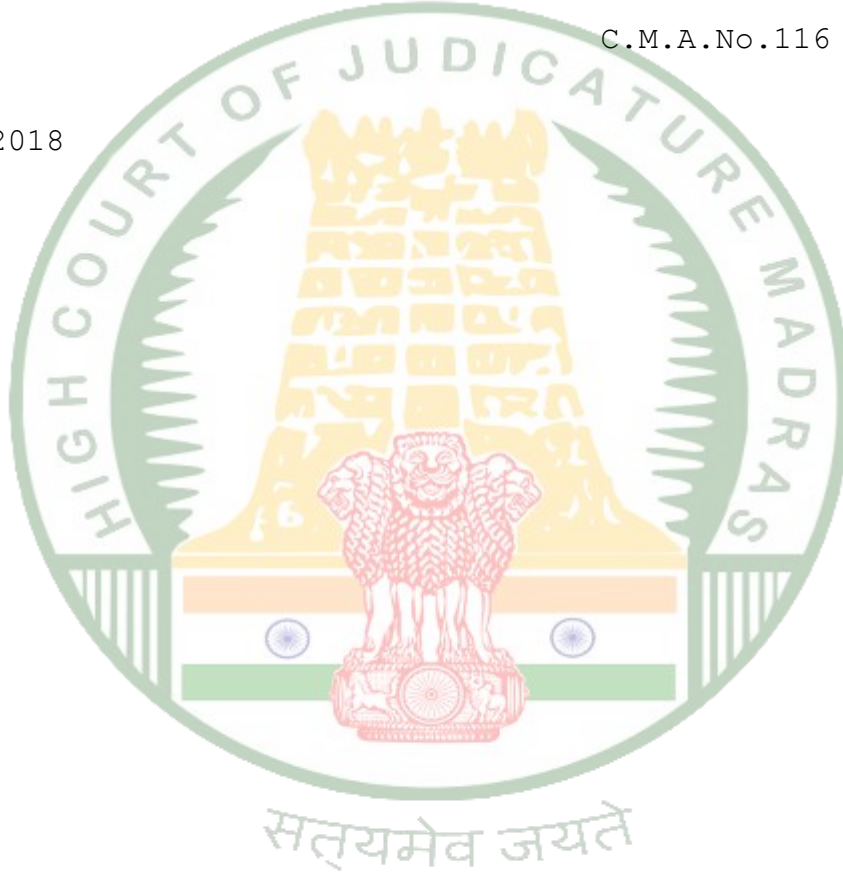
1.The V Judge,
Small Causes Court,
Chennai.

2.The Section Officer,
High Court, Madras.

+lcc to Mr.K.Suryanarayanan, Advocate sr.no.35442

C.M.A.No.116 of 2013

nmi(co)
nr 10/07/2018



WEB COPY