

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1234 of 2013

S.Vijayakumar

...Appellant/Petitioner

...vs...

1.R.Nithyananthan

2.The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai-600 001.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal order dated 07.04.2010 made in MCOP.No.4734 of 2003 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.M.Malar

For Respondents : Mr.J.Michael Visuvasam for R-2

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal dated 07.04.2010 made in MCOP.No.4734 of 2003 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai, the petitioner/claimant has come forward with this civil miscellaneous appeal for enhance the award amount.

2. For 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 23.07.2003 at about 19.00 hours, when the petitioner was proceeding in his two wheeler bearing Registration No.TN-07-L-6922 in Sardhar Patel Road, near Tamil Nade High Ways Department Office, a Mahendra Van bearing Registration No.TN-21-R-9049, came at high speed and dashed against the two wheeler in which the petitioner was travelling causing him grievous injuries all over the body

and fracture on his right hand and head. The petitioner was aged about 52 years at the time of the accident and he was employed as Depo Manager in a private concern, earning a sum of Rs.10,000/- per month. Due to the injuries suffered by him, he is not able to attend his work regularly. He is still taking treatment for the injuries suffered by him. The accident occurred only due to the negligence of the first respondent van driver. Hence, the petitioner sought for compensation for a sum of Rs.3,00,000/- 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 filed a detailed counter stating that the claim of the petitioner about the manner of accident and negligence of the first respondent driver is not correct. The same is to be established by the petitioner. The claim of the petitioner about the avocation, monthly income and nature of injuries suffered by him is also denied. The claim of the petitioner is exorbitant. Hence, the second respondent-Insurance Company seeks dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and Medical Expert was examined as P.W.2 and produced Ex.P1 to Ex.P11 documents to prove his claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. After considering the available materials on record, the Tribunal found that the negligence of the first respondent driver alone caused for the accident and directed the respondents to pay the award amount of Rs.1,06,300/- 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 appellant and the learned counsel appearing for the third respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioner contends that the evidence of P.Ws.1 and 2 was not properly considered by the Tribunal. The monthly income of the petitioner was Rs.10,000/- per month, but the Tribunal erred in fixing it as Rs.8,000/- per month. The amount awarded by the Tribunal under the different heads is very low. Even though P.W.2, the Doctor assessed the permanent disability at 40%, the

Tribunal awarded a lumpsum payment of Rs.35,000/- and the same is not proper. Hence, the petitioner seeks to enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Tribunal after considering the material available on record passed an award granting higher amount of compensation to the petitioner and the same itself is unsustainable. As such, the claim of the petitioner for enhancement of award amount is unwarranted and the same is to be negatived. Thus, the second respondent-Insurance Company seeks dismissal of the appeal.

10. According to the petitioner, on 23.07.2003 at about 19.00 hours, while he was riding his motor cycle from east to west in Sardhar Patel Road, near High Ways Department Office, a Mahendra Van bearing Registration No.TN-21-R-9049 came at high speed and dashed against him resulting in grievous injuries to him. On the basis of complaint given by the petitioner, Ex.P1 First Information Report was registered against the driver of the said Mahendra Van. The petitioner has also produced Ex.P2 Rough Sketch of the occurrence spot. The Police after conducting investigation laid the charge sheet Ex.P3 against the driver of the Mahendra Van. There is no contra evidence to the oral and documentary evidence produced before the Tribunal by the petitioner. Further, the respondent has not examined the driver of the first respondent vehicle to prove their case. In such circumstances, it is clear from the evidence of P.W.1 and contents of Ex.P1 FIR, Ex.P2 Rough Sketch and Ex.P3 copy of charge sheet that the negligence of the first respondent vehicle driver alone caused the accident. As the vehicle was insured with the second respondent, both the respondents are liable to pay the compensation to the petitioner.

11. The petitioner states that he suffered grievous injuries including fracture in his right hand and head. As per Ex.P4 discharge summary, it appears that the petitioner was treated as in patient at Kumaran Hospital from 23.07.2003 to 27.07.2003. He also suffered permanent disability. As per the evidence of P.W.2, Doctor and Ex.P11 disability certificate issued by him, the permanent disability suffered by the petitioner is fixed at 40%. The Tribunal after considering the oral evidence of P.W.2 as well as P.W.11 disability certificate issued by P.W.2 and Ex.P9 and Ex.P10 X-rays taken by P.W.2 Doctor to assess the disability of the petitioner and awarded a sum of Rs.35,000/- at the rate of Rs.1000/- per percentage as compensation to the petitioner for permanent disability suffered by him. Thus, the Tribunal has taken into consideration the

disability of the petitioner as 35% and awarded the amount. Considering the nature of injuries suffered by him and in the absence of any evidence to show that the petitioner is not able to attend to his work as he was doing prior to the accident, the conclusion of the Tribunal that the disability suffered by the petitioner is 35% appears to be just and correct and the same needs no interference. However, considering the nature of injuries suffered by the petitioner, this Court is of the view that it will be appropriate to assess the compensation for permanent disability at the rate of Rs.1,500/- per percentage. Accordingly, the loss caused due to permanent disability is calculated as follows:-

$$35\% \text{ permanent disability} \times \text{Rs.1,500/-} = \text{Rs.52,500/-}.$$

Similarly considering the nature of injury suffered by the petitioner it will be appropriate to award a sum of Rs.20,000/- towards pain and sufferings instead of Rs.10,000/- awarded by the Tribunal.

12. Considering the nature of injuries suffered by the petitioner and in the absence of any evidence regarding the monthly income of the petitioner, the Tribunal has fixed his notional income at Rs.8,000/- per month. Due to the fracture suffered by the petitioner, he could not have attend his work for some time and hence the Tribunal has awarded loss of earning during treatment period for three months and the same is calculated as follows:- Rs.8000/- x 3 months = Rs.24,000/-. The same is appropriate and does not require any modification. In the light of the above discussion and considering the nature of injuries suffered by the petitioner, this Court awarded the following amount:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	35,000.00	52,500.00
2.	Loss of earning	24,000.00	24,000.00
3.	Transport to Hospital	2,000.00	2,000.00
4.	Extra nourishment	2,000.00	5,000.00
5.	Medical Expenses	33,300.00	33,300.00
6.	Pain and sufferings	10,000.00	20,000.00
	Total	1,06,300.00	1,36,800.00

13. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount awarded by the Tribunal dated 07.04.2010 made in MCOP.No.4734 of 2003 on the file of the Motor

Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai, is enhanced to Rs.1,36,800/-. The second respondent/Insurance Company is directed to deposit the entire award amount of Rs.1,36,800/- with interest at the rate of 7.5% p.a. 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 is permitted to withdraw the award amount with accrued interest, less the amount if any already withdrawn, by filing necessary application before the Tribunal.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr.J.Michael Visuvasam , Advocate sr 11927.

+1 CC to Ms.M.Malar, Advocate sr 12208.

C.M.A.No.1234 of 2013

PVS (CO)
SP(10/05/2018)

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