

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.72 of 2018

Thangarasu ... Appellant/Claimant

 V_S

1.M.V.Martin

2.The New India Assurance Company Ltd.,
39-C, Bye pass road,
Dharmapuri - 636 701.

3.0.Balakrishnan

4.ICICI Lombard General Insurance Co. Ltd.,
Swarnamigai Plaza, SF.No.6/5, Block No.7
Ward-C, Omalur Main Road,
New Bus Stand, Salem-636 009.

Respondents/Respondents

(No relief sought against the 1st & 3rd respondents, since they have set exparte before the Tribunal, hence notice may be dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 04.6.2015 passed in M.C.O.P.No.149 of 2008 by the Motor Accidents Claims Tribunal (Sub-Court), Sankari.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.K.Thirunavukkarasu (for R2)

R1 & R3 - Experte

4th Respondent : Mrs.R.Srividya

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award dated 4.6.2015 made in M.C.O.P.No.149 of 2008 on the file

of the learned Motor Accident Claims Tribunal (Sub-Court), Sankari. The claimant is the appellant herein.

2. Brief facts are that on 6.2.2008 at about 15.00 hours, the appellant was travelling as pillion rider in a TVS Victor motorcycle bearing registration No.TN-33 AA 8973 driven by one Palaniswamy and when motorcycle was nearing Calcium Boiler Varathangattanur in Sankari to Konganapuram road, a car bearing registration No.TN-43 K 7777, owned by the first respondent insured with the second respondent driven by its driver in a rash and negligent manner hit against the motorcycle. At that time, the driver of three wheeler bearing registration No.TN-30 R 2783, owned by the third respondent insured with the fourth respondent driven the same in a rash and negligent manner also hit against the motorcycle. Due to the impact, the appellant sustained grievous injuries all over the body. After the accident, the appellant was admitted in Government Hospital, Sankari where from he was shifted to LKM Hospital, Erode for further treatment. Regarding the accident, a criminal case in Crime No.128 of 2008 was registered by Sankari police station. Stating that the accident occurred due to the rash and negligent driving of drivers of the car as well as the three wheeler, the appellant has filed claim petition claiming compensation of Rs.10,00,000/-.

3. Resisting the claim petition, the second respondent filed counter stating that the accident took place only due to the rash and negligent driving of the rider of the motorcycle Palanisamy and met the accident with vehicles. The accident was due to the composite negligence of two vehicles. The second respondent also denied the age, occupation, monthly income, injuries sustained by the appellant and prayed for dismissal of the claim petition.

4. Denying the accident, the fourth respondent filed counter stating that if a driver of the car drove it in a careful manner, the accident would have been averted. Therefore, the respondents 1 and 2 alone are liable to pay the compensation. Further the rider of the motorcycle also incompetence to drove the same. The third respondent wilfully committed breach of policy condition and hence, the fourth respondent is not liable to indemnify the owner of the three wheeler. The fourth respondent also denied the age, occupation, monthly income of the deceased and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.R.Krishnasamy was examined as P.W.2 and Exs.P1 to P13 were marked. The fourth respondent examined the owner of the three wheeler, i.e., the third respondent as R.W.1 and

marked Ex.R1.

6. Upon consideration of the oral and documentary evidence, the Tribunal held that drivers of car, three wheeler and the rider of the motorcycle were jointly and severally liable for the accident in the ratio 2 : 1 : 1 i.e., 50% on the car and 25% each on the three wheeler and the motorcycle. The Tribunal awarded total compensation of Rs.3,57,000/- and after deducting 25%, the Tribunal passed an award directing the respondents 2 and 4 to pay the said amount in the ratio 50% : 25%. Challenging the liability of 25% fastened on the rider of the motorcycle and also seeking enhancement, the appellant has filed the present appeal.

7. The learned counsel for the appellant submitted that the Tribunal failed to note that the charge sheet was laid against the drivers of the respondents 1 and 3 and despite of which, the Tribunal fixed contributory negligence to an extent of 25% on the rider of the two wheeler without any whisper of material evidence. The finding of the Tribunal that the rider of the two wheeler had also responsible for the accident is unsustainable and the same is liable to be set aside.

8. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel submitted that the Tribunal failed to note that the appellant sustained disability to an extent of 86% and one-third of his right leg was removed and he was unable to carry on any of his avocation due to injuries sustained in the accident. The learned counsel would submit that Rs.1,72,000/- awarded by the Tribunal towards disability is very low and the Tribunal ought to have awarded more compensation by applying multiplier theory. Finally, he would submit that the total compensation of Rs.2,67,750/- awarded by the Tribunal after deducing 25% liability on the rider of the two wheeler is very low and the same needs to be enhanced.

9. The learned counsel for the second respondent submitted that since the accident occurred due to composite negligence of two vehicles, the Tribunal was right in fastening the liability of 50% on the car bearing registration No.TN-43 K 7777. As far as quantum of compensation is concerned, after analysing the materials, the Tribunal awarded a reasonable compensation and same needs no interference.

10. I have heard Mr.C.Prabakaran, learned counsel appearing for the appellant and Mr.K.Thirunavukkarasu, learned counsel for the 2nd respondent and also perused the materials available on record.

11. Though the appellant contended that the accident was due to rash and negligent driving of drivers of the car and the three wheeler, Ex.P1-FIR was registered against the driver of the car only. But the police, after investigation, laid charge sheet against drivers of the car and the three wheeler.

12. At the time of accident, the first respondent car was insured with the second respondent insurance company and through Ex.P7-Motor Vehicle Inspector's Report, the appellant proved that the driver of the car was having valid driving licence to drive the car. But the perusal of Ex.P7-Motor Vehicle Inspector's Report, it is seen that during inspection, the owner of the three wheeler was called upon to produce the driving licence of the three wheeler. But the owner of the three wheeler i.e., the third respondent herein has not produced the driving licence of his driver. In this regard, the evidence of R.W.1 is to the effect that he is the owner cum driver of the three wheeler involved in the accident and his driver was not in possession of valid driving licence at the time of accident.

13. The appellant, who was examined as P.W.1 also deposed in his cross-examination that the rider of the motorcycle had no valid driving licence at the time of accident. Upon considering the above said oral and documentary evidence of both sides, the Tribunal held that the rider of the motorcycle, in which the appellant travelled and the driver of the three wheeler were not possessing valid driving licence at the time of accident. Even though the charge sheet was laid against drivers of the car and the three wheeler, it is clear that the rider of the motorcycle was not having valid driving licence at the time of accident. In such view of the matter, the Tribunal held that drivers of car, three wheeler and the rider of the motorcycle are jointly responsible for the accident in the ratio of 50% : 25% : 25% respectively. Since the aforesaid finding of the Tribunal is based on evidence, this Court does not want to interfere with the same. Further, the finding of the Tribunal directing the fourth respondent to pay first and then recover it from the third respondent is also warrants no interference.

14. Coming to the quantum of compensation, the Tribunal awarded total compensation of Rs.2,67,750/- after deducting 25% liability on the appellant. While awarding the amount, the Tribunal has taken the disability as 86% and taken Rs.2,000/- per percentage of disability and awarded Rs.1,72,000/- towards grievous injuries.

15. Admittedly in the accident, the appellant had sustained grievous injuries and one-third of his right leg was removed. P.W.2-Doctor who examined the appellant and issued Ex.P12-disability certificate deposed that the appellant sustained

disability to an extent of 86% and one-third of the right leg was removed and he was unable to carry on any of his avocation due to injuries sustained in the accident.

16. In his evidence, the appellant deposed that in the accident, he had sustained bone fracture at right hand elbow, cut injury at right thumb finger, cut injury at left angle, blood injury at left cheek and also sustained bone fracture at left hip, left knee and his right leg was amputated.

17. Since the appellant sustained grievous injuries in the accident and one-third of his right leg was amputated, the Tribunal erred in awarding compensation for injuries by taking Rs.2,000/- per percentage of disability and it ought to have adopted multiplier method. Due to amputation of one-third of his right leg, the working capacity of the appellant was affected. While determining the quantum of compensation payable to victims of accident, who are disabled either permanently or temporarily, it would be appropriate to adopt multiplier method for loss of future earnings on account of disability. This is a fit case to apply multiplier method instead of granting Rs.2,000/- for per percentage of disability.

18. The appellant stated that he was earning Rs.5,000/- per month by working as power loom weaver. To prove the same, the appellant has not produced any proof. However, considering the age of deceased at the time of accident, he would have earned atleast Rs.4,500/- per month by doing power loom weaving work and accordingly, the monthly earning of the appellant is fixed at Rs.4,500/-.

19. In the claim petition, the appellant stated that he was aged 22 years. But in Ex.P5-wound certificate, the age of the appellant was mentioned as 24 years. Ex.P8-treatment record also shows the age of the appellant as 24 years. Thus, the Tribunal was right in fixing the age of the appellant as 24 years. For the age group 21-25, the multiplier to be adopted is "18" and accordingly, multiplier "18" is taken for calculating the loss of earning power.

20. As stated supra, P.W.2-Doctor assessed the disability at 86% and issued Ex.P12-disability certificate. Considering the nature of injuries sustained by the appellant in the accident and also taking note of the fact that one-third of the right leg was amputated, there is no reason to discard the disability assessed by P.W.2-Doctor. Taking the monthly income of the appellant at Rs.4,500/- and also the disability at 86%, it would be appropriate to award a sum of Rs.8,35,920/- (Rs.4500 x 12 x 18 x 86/100) towards the loss of earning power.

21. The appellant claimed a sum of Rs.1,48,159/- towards medical expenses and marked Ex.P6-medical bills. Finding that some of the bills stood in the name of Palanisamy and Rasathi, after deducting the same, the Tribunal awarded Rs.1,40,000/- towards medical expenses. Since Rs.1,40,000/- awarded by the Tribunal is based on medical bills, the same is maintained.

22. The Tribunal awarded Rs.10,000/- for extra-nourishment. Considering the nature of injuries and the period of treatment undergone by the appellant, Rs.10,000/- awarded by the Tribunal for extra-nourishment is maintained.

23. The Tribunal awarded Rs.30,000/- for partial loss of earning capacity. Since this Court awarded Rs.8,35,920/- towards loss of earning power by adopting multiplier method, Rs.30,000/- awarded by the Tribunal for partial loss of earning capacity is deleted.

24. The Tribunal awarded Rs.5,000/- towards transport charges. Immediately after the accident, the appellant was taken to the Government Hospital, Sankari, where from he was shifted to LKM Hospital, Erode. Therefore, this Court feels that Rs.5,000/- awarded by the Tribunal for transport charges low and the same is enhanced to Rs.10,000/-.

25. The Tribunal has not awarded any amount towards pain and suffering. Considering the nature of injuries sustained by the appellant in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Hence, Rs.25,000/- is awarded for pain and suffering.

26. The Tribunal has not awarded any amount towards attender charges and loss of amenities. Considering the period of treatment and also the fact that the appellant would have been taken care of by the attender during the period of treatment, a sum of Rs.10,000/- is awarded for attender charges and another sum of Rs.10,000/- is awarded towards loss of amenities. Thus, the total compensation of Rs.3,57,000/- determined by the Tribunal is enhanced to Rs.10,40,920/- as under:

Heads	Rs.
Loss of earning power	8,35,920.00
Medical bills	1,40,000.00

Heads	Rs.
Pain and suffering	25,000.00
Extra-nourishment	10,000.00
Attender charges	10,000.00
Loss of amenities	10,000.00
Transport charges	10,000.00
Total	10,40,920.00

27. Since the liability of the offending car, three wheeler and also the two wheeler in which the appellant was travelling was fixed in the ratio 2 : 1 : 1, deducting 25% i.e., Rs.2,60,230/- towards contributory negligence of the rider of the two wheeler, the appellant is entitled for total compensation of Rs.7,80,690/- payable with interest at the rate of 7.5% per annum.

28. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The compensation of Rs.2,67,750/- awarded by the Tribunal is enhanced to Rs.7,80,690/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. Out of Rs.7,80,690/-, the second respondent insurance company is directed to deposit Rs.5,20,460/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. Similarly, the fourth respondent is directed to deposit Rs.2,60,230/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit within the same period of eight weeks from the date of receipt of a copy of this judgment at the first instance and then recover the same from the third respondent. On such deposit, the appellant is permitted to withdraw the entire amount along with accrued interest on filing proper application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Motor Accidents Claims Tribunal,
Sub-Court, Sankari.
- 2.The New India Assurance Company Ltd.,
39-C, Bye pass road,
Dharmapuri - 636 701.
- 3.ICICI Lombard General Insurance Co. Ltd.,
Swarnamigai Plaza, SF.No.6/5, Block No.7
Ward-C, Omalur Main Road,
New Bus Stand, Salem-636 009.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 68239
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.69322

Civil Miscellaneous Appeal No.72 of 2018

RSV(CO)
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