

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos. 1463 of 2013 and 501 of 2014

D.Maria Selvaraj ..Appellant/Petitioners
in C.M.A.No.1463 of 2013

Justin Dhiraviam ..Appellant/Respondents
in C.M.A.No.501 of 2014

Versus

1.D.Rajan

2.The Oriental Insurance Co.Ltd,
II, Jewel Arcade Layam Road,
Cochin - 682 011. ..Respondents in both the C.M.As'

Civil Miscellaneous Appeals filed against the fair and
decretal order dated 13.03.2008 made in M.C.O.P.Nos.4104 of 2004
and 4105 of 2004 on the file of the Motor Accident Claims
Tribunal, II Judge, Court of Small Causes, Chennai, respectively.

For Appellant
In both the C.M.As' : Mr.A.N.Viswanatha Rao

For Respondents
In both the C.M.As' : Mr.P.Kandasamy [for R2]

C O M M O N J U D G M E N T

The above Civil Miscellaneous Appeals are filed against the
fair and decretal order dated 13.03.2008 made in
M.C.O.P.Nos.4104 of 2004 and 4105 of 2004 on the file of the
Motor Accident Claims Tribunal, II Judge, Court of Small Causes,
Chennai, respectively.

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

3. The case of the petitioners is that on 17.05.2004 at
about 1.00 a.m., the petitioner in M.C.O.P.No.4104

[C.M.A.No.1463/2013] was travelling in the vehicle bearing Registration No.KL-04-M-1616 from Mudichur to Kundapur in Karnataka and as they were approaching Singadivakkam junction, driver of the said van driving the vehicle at high speed and in negligent manner, dashed against the stationary lorry bearing Registration No.KA-01-AA-1222, resulting in the accident. The rash and negligent driving by the driver of the van in which the petitioner travelled was the cause for the accident. The other petitioner in M.C.O.P.No.4105/2004 [C.M.A.No.501/2014] was travelling in the said van along with the petitioner in M.C.O.P.No.4104/2004. Thus, both the petitioners claim the negligence of the driver of the van, in which they travelled, only caused the accident. The petitioner in M.C.O.P.No.4104/2004 was aged 25 years and by working as a supervisor in a private concern was earning Rs.6,000/-per month. Due to the injury suffered by him, namely, Grade III B both bone fracture fibula neck fracture, right lower 1/3rd fibula fracture, left wrist fracture, ligamentous injury, left knee and other injuries, he is not able to attend to his work regularly. Hence, the petitioner seeks a sum of Rs.8,00,000/- as compensation. Similarly, the petitioner in M.C.O.P.No.4105/2004 was aged 25 years and was working as a grader in the private concern earning Rs.4,000/- per month. He suffered Right knee fracture, left knee fracture, injuries on the cheek and injury over the forehead and he is unable to attend to his work regularly. Hence, he sought for compensation of Rs.4,78,000/- from the respondent who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners by filing counter, the 2nd respondent/Insurance Company contends that the accident does not occur in the manner alleged by the petitioners. Even though the alleged accident took place on 17.05.2004 at 1.30a.m., the police registered the case only at 12.30 hours belatedly. The claim of the petitioners about the age, avocation and income is denied. The petitioners have to prove that the driver of the vehicle in which they travelled possessed valid driving license. As the vehicle in which the petitioners travelled was a goods carrying commercial vehicle, gracious passengers are not allowed to travel in it. The same will amount to violation of policy condition and the 2nd respondent/Insurance Company is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.5 and produced documents Exs.P.1 to P.21 to prove their contention. On the side of the respondents neither oral nor documentary evidence let in. On the basis of available evidence, the Tribunal found negligence of the 1st respondent van driver alone resulted in the accident passed an award for a sum of

Rs.2,37,300/- as compensation for the petitioner in M.C.O.P.No.4104/2004 and the award for a sum of Rs.1,01,935/- as compensation for the petitioner in M.C.O.P.No.4105/2004. Being not satisfied with the quantum of the award passed by the Tribunal, both the petitioners have preferred the present appeals seeking enhancement of the award passed by the Tribunal.

6. The learned counsel for the petitioners contends that the Tribunal failed to appreciate the evidence properly. The Tribunal also failed to provide appropriate amount under difference heads. The Tribunal fixed the disability on the lower side and awarded lesser amount towards disability. The Medical evidence was not properly appreciated. Hence, the petitioners seek enhancement of the award amount by entertaining the appeals.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that as the accident did not occur not due to negligence of the 1st respondent driver, they are not liable to pay any compensation. The award passed by the Tribunal is on the higher side and the same needs no further enhancement. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeals.

8. Heard both sides and perused the available materials on records.

9. The petitioners contended that on 17.05.2004, while both of them were travelling in the van bearing Registration No.KL-04-M-1616 from Mudichur near Singadivakkam Junction, due to the high speed in which the van was driven, the driver was unable to control the speed and dashed against the stationary lorry, resulting in the petitioners suffering grievous injuries. The accident occurred only due to negligence of the driver. The police also registered Ex.P.1 - F.I.R., against the 1st respondent vehicle driver only. Thus, it is clear from the evidence of P.W.1 and P.W.2 as well as Ex.P.1 - F.I.R that the negligent driving of the van at a high speed by the 1st respondent driver alone caused the accident. Further, the 1st respondent has not chosen to let in any evidence to contradict the claim of the petitioners. Thus, the finding of the Tribunal that the accident occurred only due to negligence of the 1st respondent van driver is just and proper.

10. The petitioners sought for compensation from the respondents as the owner and insurer of the vehicle. The petitioner in M.C.O.P.No.4104/2004 stated that he suffered Grade III B Both bone fracture in the accident and took treatment as in patient in the private hospital for 45 days, as per Ex.P.2 - Discharge Summary and subsequently took treatment in the same hospital for 2 days as in patient as per Ex.P.3 - Discharge summary. Thereafter, he was taking treatment as out patient as

per Ex.P.6. Thus, the petitioner in M.C.O.P.No.4104/2004 claims he suffered multiple fractures and grievous injuries and is unable to carry on his supervisor work fully.

11. The Doctor, who assessed the disability, while deposing as P.W.3, stated that the petitioner suffered 60% permanent disability and the certificate issued by him was marked as Ex.P.16. However, the Doctor has not given treatment to the petitioner as such, the Tribunal fixed the disability at 50% instead of 60%. The Tribunal also awarded a sum of Rs.50,000/- as compensation for the disability suffered by him. It is apparent from the evidence of P.W.1 and also P.W.3 Doctor that the petitioner has suffered fractures at several parts. He also underwent treatment as inpatient nearly for 47 days. However, there is no evidence to prove that the petitioner suffered any functional disability. Hence, it will be appropriate to apply percentage system for compensating the petitioner for disability suffered by him. Considering the medical evidence of P.W.3 and as there is no contra evidence, the disability is fixed as 60% as stated by P.W.3 and it would be appropriate to award a sum of Rs.3,000/- per percentage of disability. Hence, the compensation under the head 'disability' is calculated as follows:-

$$\text{Rs.3000} * 60\% = \text{Rs.1,80,000/-}$$

12. The petitioner also produced medical bills as Exs.P.4, P.5 and P.6 and the same will come to Rs.1,34,445/-. Considering the injury suffered and other circumstances, this Court is of the view that the petitioner is entitled for the compensation under different heads on higher level and as such, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Permanent disability	Rs.50,000.00	Rs.1,80,000.00
2	Transportation	Rs.8,850.00	Rs.8,850.00
3	Extra Nourishment	Rs.3,000.00	Rs.10,000.00
4	Medical Expenses	Rs.1,30,445.00	Rs.1,30,445.00
5	Pain and Suffering	Rs.10,000.00	Rs.30,000.00
6	Future Medical Expenses	Rs.15,000.00	Rs.15,000.00
7	Loss of Earnings	Rs.20,000.00	Rs.30,000.00
8	Loss of Amenities	-	Rs.30,000.00
9	Total	Rs.2,37,295.00	Rs.4,34,295.00

13. The petitioner in M.C.O.P.No.4105/2004 stated that he suffered Pettalla Fracture right and left and undisplaced fracture left frontal bone in the accident and took treatment as in patient in the private hospital for 30 days, as per Ex.P.10 -

Discharge Summary. Thus, the petitioner in M.C.O.P.No.4105/2004 claims that he suffered fracture and grievous injury and unable to carry on grader work.

14. The Doctor, who assessed the disability, stated that the petitioner suffered 40% permanent disability and the certificate issued by him was marked as Ex.P.19. However, the Doctor has not given treatment to the petitioner as such, the Tribunal fixed the disability at 30% instead of 40%. The Tribunal also awarded a sum of Rs.30,000/- as compensation for the disability suffered by him. It is apparent from the evidence of P.W.1 and also P.W.3 Doctor, that the petitioner has suffered fracture at several parts. He also underwent treatment as inpatient nearly for 30 days. However, there is no evidence to prove that the petitioner suffered any functional disability. Hence, it will be appropriate to apply percentage system for compensating the disability suffered by him. Considering the medical evidence of P.W.3 and as there is no contra evidence the disability is fixed as 40% as stated by P.W.3., and it would be appropriate to award a sum of Rs.3,000/- per percentage of disability. Hence, the compensation under the head 'disability' is calculated as follows:-

$$\text{Rs.3000} * 40\% = \text{Rs.1,20,000/-}$$

15. The petitioner also produced medical bills as Exs.P.11, P.12 and the same will come to Rs.42,435/-. Considering the injuries suffered and other circumstances, this Court is of the view that the petitioner is entitled for the compensation under different heads on higher level and as such the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Permanent disability	Rs.30,000.00	Rs.1,20,000.00
2	Transportation	Rs.1,500.00	Rs.1,500.00
3	Extra Nourishment	Rs.2,000.00	Rs.20,000.00
4	Medical Expenses	Rs.42,435.00	Rs.42,435.00
5	Pain and Sufferings	Rs.10,000.00	Rs.30,000.00
6	Loss of Earnings	Rs.16,000.00	Rs.20,000.00
7	Loss of Amenities	-	Rs.30,000.00
8	Total	Rs.1,01,935.00	Rs.2,63,935.00

16. In the result,

(i) Both the Civil Miscellaneous Appeals are allowed, by enhancing the compensation from Rs.2,37,295/- to Rs.4,34,295/- in C.M.A.No.1463 of 2013, from Rs.1,01,935/- to Rs.2,63,935/- in

C.M.A.No.501 of 2014.

(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) The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the petitioners/appellants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) Petitioners/Appellants shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

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

KJ(CO)

sm:14.5.2018

C.M.A.Nos. 1463 of 2013
and 501 of 2014

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