

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1773 of 2012
and M.P.No.1 of 2012

Royal Sundaram Alliance Insurance Co.Ltd.,
Sundaram Towers,
45 & 46, Whites Road
Chennai-600 014

..Appellant/2nd respondent

Vs

1.Ambikapathy ...1st respondent/Petitioner

2.Mallikeswari ...2nd Respondent/1st respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 16.11.2011 passed in M.C.O.P.No.180 of 2007 on the file of Motor Accidents Claims Tribunal, (Sub Court), Ariyalur.

For appellant : : Mr.S.Manohar

for Respondents : : Mr.A.Murugan for R1.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/2nd respondent-Insurance Company, challenging the judgment and decree dated 16.11.2011 passed in M.C.O.P.No.180 of 2007 on the file of Motor Accidents Claims Tribunal, (Sub Court), Ariyalur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 31.03.2007 at 7.00 a.m., while the petitioner along with his relative were standing near the house of one Selvasihamani in the Jayankondam Main road, the 1st respondent Lorry bearing Reg.No.TN-30-U-2055, came at high speed, dashed against the petitioner causing him multiple grievous injuries. The accident occurred due to negligence of the 1st respondent Lorry driver only. The petitioner was aged 20 years and due to the injury suffered, he is unable to attend to any normal activity. Thus, the petitioner initially sought for a sum of Rs.5,00,000/- as

compensation and thereafter, due to injuries sustained in the accident, the Petitioner's marital prospects is totally affected and therefore, sought a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The nature of injuries suffered by the Petitioner and the consequential treatment undergone by him is also disputed. The age and other aspects regarding the status of the petitioner is disputed. The accident occurred only due to the negligence of the petitioner, who suddenly crossed the road from left to right without noticing the oncoming vehicle. The driver of the 1st respondent lorry, on seeing the petitioner suddenly applied brake, took the lorry to the extreme right to avoid the accident, but inspite of his best efforts, the petitioner dashed against the Lorry resulting in the accident. As such, the driver of the lorry is not responsible for the accident. Thus, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2 and P.W.3. The petitioner also produced documents Ex.P.1 to Ex.P.32 to prove his claim. 1st respondent remained exparte. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, after analysing the available evidence on record, found the negligence of the 1st respondent vehicle driver alone caused the accident and passed award of Rs.4,31,200/-. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

5. The learned counsel for the 2nd respondent/Insurance company has contended that the Tribunal wrongly fixed the disability at 50% and awarded higher amount as compensation. The Tribunal wrongly fixed negligence on the 1st respondent Lorry driver. The amount awarded by the Tribunal under different heads is very exorbitant. Thus, the 2nd respondent-Insurance company sought for setting aside the award passed by the Tribunal by allowing the appeal.

6. Per contra, the learned counsel for the Injured Petitioner contended that due to the injury suffered by the Petitioner, who is an young man and his future matrimonial life is affected and also suffering from permanent disability. Due to the injury suffered, he discontinued his education and his entire life is affected. Thus the petitioner/claimant sought for dismissal of the appeal, contending that the award passed by the Tribunal is just and proper.

7. The appeal is only quantum appeal. Negligence aspect is not raised by either side.

8. The Petitioner who deposed as P.W.1 stated that the driver of the 1st respondent Lorry alone caused the accident due to his over speed and negligence. The Police have registered Ex.P.1-FIR against the 1st respondent driver and after investigation, laid Ex.P.10-charge sheet also against the said driver only. It is also clear from Ex.P.11 copy of the Judgment that the driver of the 1st respondent lorry was found guilty and convicted in the criminal court. On the other hand, the respondent has not examined anybody on their side to disprove the claim of the petitioner. As such, it is clear from P.W.1 evidence as well as Ex.P.1-FIR, Ex.P.10-Chargesheet and Ex.P.11 - Judgment copy that the negligence of the 1st respondent vehicle driver alone caused the accident.

9.1. The Petitioner has suffered the following injuries in the accident:-

"Multiple grievous injuries all over his body including both testicles and blood is bleeding from urethra while passing urine, fracture in ribs, both knees, both elbows, chest, forehead, hip".

9.2. According to the Petitioner, he underwent treatment in G.H.Jeyankondam and thereafter in the Medical College Hospital, at Thanjavur. He further stated that he incurred medical expenses of Rs.1,00,000/- and spent a sum of Rs.21,200/- for travel expenses. The doctor who deposed as P.W.2 stated that the petitioner suffered fracture in the four hip bones and suffered muscle tear in his urinary track. Due to the same, a tube was fixed to pass urine. He also suffered injuries in the right thigh and his hip movement is affected. The Petitioner also states that his testacles are affected and due to that his matrimonial prospects is affected. The Petitioner finds difficulty in passing urine. P.W.2 Doctor, after examining the petitioner and analysing the medical records fixed the disability suffered by him at 50%. According to P.W.2/doctor, in future to remove the tube fixed to pass urine, the Petitioner will have to spend Rs.1,00,000/-. Likewise, the other doctor who deposed as P.W.3 stated that the hip bone is fractured and the urinary track is also damaged. P.W.2 further stated that due to the injuries suffered in the hip portion as well as damage caused to the urinary track, the petitioner will find difficulty in involving the matrimonial life. P.W.2 also stated that the petitioner will need some amount for future medical expenses. The disability certificate issued by him is produced as Ex.P.32.

9.3. The Petitioner also stated that he took treatment in various hospitals as inpatient and produced discharge certificate given by Surgeon, Multi Speciality Hospital as Ex.P.5 and OP Chit from Zipmer Hospital as Ex.P.6. The treatment record issued by S.B.Hospital is Ex.P.7 and Ultra Sonogram Report from the said hospital is Ex.P.8. The Petitioner also produced report recording the treatment given by the Surgeon at Government Hospital, Jeyankondam as Ex.P.18. The Petitioner also produced the disability certificate issued by P.W.2 Dr.Saravanan as Ex.P.22 and the disability certificate issued by Dr.Mathivanan as Ex.P.32. It is therefore clear from the same that the petitioner had suffered multiple injuries and consequently, permanent disability of 50%. In the absence of any contra evidence produced by the respondent, it will be appropriate to fix the disability suffered by the petitioner at 50% and the same can be compensated at the rate of Rs.2000/- per percentage. The compensation towards disability is as under:-

$$\text{Rs.2000/-} \times 50\% = \text{Rs.1,00,000/-}.$$
Considering the evidence of P.W.2 and P.W.3 doctor that the petitioner require future medical treatment to remove the tube earlier fixed to pass urine and the petitioner will incur expenses Rs.50,000/- to Rs.1,00,000/-, it will be appropriate to award Rs.1,00,000/- towards future medical expenses.

9.4. The Petitioner produced Medical Bills as Ex.P.19, Ex.P.30 and Ex.P.31. He also produced Ex.P.20-Rental Bill for Transport to Hospital. As such, considering the same, it will be appropriate to provide for medical expenses and transport charges a total sum of Rs.1,00,000/-.

9.5. The Petitioner undergone surgical treatment and also treatment as inpatient over a lengthy period of time as evident by Ex.P.5-Discharge summary and other medical records produced by him. Hence, for Pain and Suffering suffered by him, Rs.50,000/- is awarded.

10. Keeping in mind the injury suffered and the consequent problem undergone by the petitioner, towards Extra Nutrition Rs.20,000/- is awarded. As per doctor evidence, the petitioner will face difficulty to have normal matrimonial life. Hence, towards loss of marital prospects, a sum of Rs.25,000/- is awarded. Thus, a total sum of Rs.3,95,000/- is awarded. The modified award amount is as follows:-

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Medical expenses and Transport expenses	1,00,000	1,00,000

Sl.No	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
2.	Car expenses	21,200	---
3.	Surgery charges	1,00,000	---
4.	Loss of income during the period of treatment	1,50,000	---
5.	Future medical expenses	60,000	1,00,000
6.	Partial permanent disability	---	1,00,000
7.	Pain and suffering	---	50,000
8.	Extra nourishment	---	20,000
9.	Loss of marital prospects	---	25,000
	Total	4,31,200	3,95,000

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The 1st respondent/Claimant is entitled to award amount of Rs.3,95,000/-.

(iii) The appellant/2nd respondent -Insurance company is directed to deposit the entire modified award amount of Rs.3,95,000/- [Rupees Three lakhs ninety five thousand only] along with interest and cost, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited.

(iv) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(v) Excess amount, if any in deposit, shall be refunded to the appellant/Insurance company after satisfying the order of this court.

(vi) The 1st respondent/claimant is entitled to withdraw the award amount on filing necessary application before the Tribunal. The Tribunal shall pass necessary orders for disbursal of the award amount.

(vii) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Ariyalur.

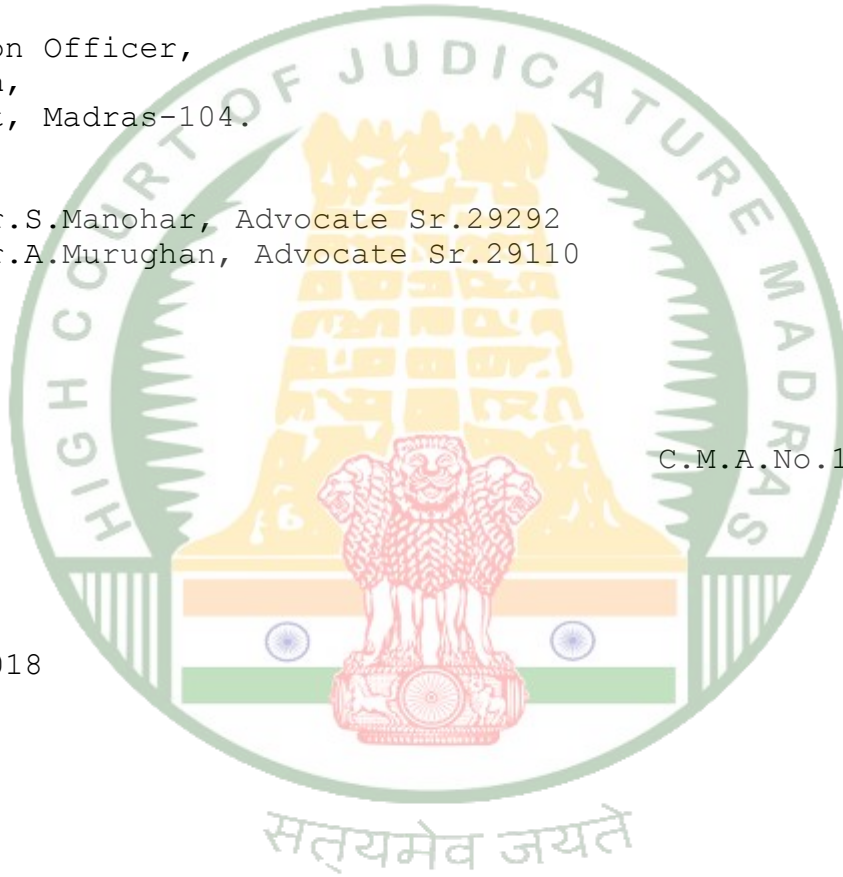
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The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.S.Manohar, Advocate Sr.29292
+1cc to Mr.A.Murugan, Advocate Sr.29110

C.M.A.No.1773 of 2012

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