

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2585 of 2009
and
Cross Obj.No.3 of 2014

The National Insurance Co. Ltd,
Chennai-600 002.

.... APPELLANT IN CMA.2585 OF 2009/
2ND RESPONDENT IN CROSS OBJ /1ST RESPONDENT

..vs..

1.J.Johnson

.... 1ST RESPONDENT IN CMA.2585 OF 2009/
CROSS OBJECTOR/CLAIMANT

2.Ms.Jaigopal Carodia Hindu Vid, Mat.

Hr. Sec. School,
Postal Colony 4th Street,
West Mambalam,
Chennai-600 033.

.... 2ND RESPONDENT IN CMA.2585 OF 2009/
1ST RESPONDENT CROSS OBJ /
2ND RESPONDENT

This Civil Miscellaneous Appeals has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 19.12.2007 made in MCOP.No.286 of 2003 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Chennai.

For Appellant : Mr.J.Chandran

For Respondents: Mr.K.Varadhakamaraj for R-1

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 19.12.2007 made in MCOP.No.286 of 2003 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Chennai, the second respondent-Insurance Company filed this present appeal.

Aggrieved over the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed the Cross Objection No.3 of 2014 for enhancing 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 29.06.2002, at about 14.15 hours, while the petitioner was travelling as pillion rider in the bicycle, in 100 Feet Road, from Udhayam Theatre towards Kathipara Junction, at Chennai, the bus bearing Registration No.TN-09-M-2241 belonging to the first respondent and insured with the second respondent came at high speed from behind and dashed against the bicycle causing grievous injuries to the petitioner. According to the petitioner, the negligence of the first respondent bus driver alone caused the accident. At the time of the accident, the petitioner was aged about 19 years and he was a student as well as attended part time work in PCO Booth, earning a sum of Rs.1,500/- per month. Due to the injuries suffered by him, he is not able to concentrate in his study and not attended his part time work properly. Hence, the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the second respondent/Insurance Company filed a detailed counter disputing the nature of accident as alleged by the petitioner. The second respondent also disputed the age, avocation and income claimed by the petitioner. The first respondent has not communicated the details of the vehicle insurance and the particulars of driving licence of the driver of the bus and as such the second respondent seeks dismissal of the petition.

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

6. The Tribunal, on the basis of available materials on record fixed the negligence on the part of the first respondent bus driver alone as cause for the accident and awarded a sum of Rs.1,18,500/- as compensation to the petitioner payable by the respondents. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal to set aside the order passed by the Tribunal.

6-A. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with the Cross Objection seeking enhancement of award amount.

7. I have heard the learned counsel appearing on either side and perused the materials available on record.

8. The learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal ought to have fixed the negligent act of the petitioner as the reason for causing the accident and not the negligence of the driver of the first respondent bus. The Tribunal failed to appreciate the evidence properly and assessed the disability at 35% erroneously. The quantum of compensation awarded by the Tribunal is on the higher side. Hence, the second respondent Insurance Company seeks to allow the appeal and set aside the award passed by the Tribunal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contended that the Tribunal ought to have awarded higher amount towards medical expenses and loss of income suffered by the petitioner. The learned counsel appearing for the petitioner pointed out that in spite of producing medical bills to the tune of Rs.28,913/-, the Tribunal awarded only a sum of Rs.2,000/- towards medical expenses and as such the award passed by the Tribunal is on the lower side. Hence, the Cross Objection filed by him should be entertained and the quantum of compensation awarded by the Tribunal is sought to be enhanced. Hence, the petitioner seeks dismissal of the appeal as no ground is made out by the Insurance Company to reduce the quantum of compensation.

10. The petitioner who is the injured, who deposed as P.W.1 and stated that on 29.06.2002, while he was going as a pillion rider in the bicycle driven by his friend Velu in 100 feet road, from Uthayam Theatre towards Kathipara Junction in Guindy, around 2.15 p.m., the bus bearing Registration No.TN-09-M-2241 came at high speed from behind and dashed against the bicycle in which he was travelling. According to P.W.1, the accident occurred only due to the rash and negligent driving of the bus by its driver. The second respondent has not chosen to examine the driver of the bus or any other person to contradict the oral version of the accident by P.W.1. Further, the petitioner stated that the police registered the case against the driver of the bus only and produced a copy of the FIR as Ex.P1. Further, it is stated that after completing the investigation, the police laid the charge sheet against the driver of the first respondent bus only as evidenced by Ex.P3 copy of the charge sheet. It is therefore clear that the police after registering the case, investigated the matter and laid the charge sheet against the driver of the bus. As such it is clear from the oral evidence of P.W.1 and Ex.P1 and Ex.P3 that the negligence of the first respondent bus driver alone resulted in

the accident. The same is corroborated by Ex.P2 Rough Sketch of the accident spot prepared by the police. Considering the above said materials and the fact that no contra evidence either oral or documentary evidence is advanced by the respondent, it is clear that the petitioner has established the fact of negligence of the first respondent bus driver alone caused the accident. The finding of the Tribunal to that effect is just and proper.

11. The petitioner stated that he suffered fracture on the left femur Right thigh degloving and crush injury, Right knee dislocation, right hand badly injured and abrasion all over the body. According to him, he took treatment in the Government Hospital, Royapettah and produced Ex.P4 O.P.Chit and Ex.P5 discharge summary. As per the same, the petitioner was admitted on 29.06.2002, underwent surgical operation on 12.07.2002 and then discharged on 25.07.2002 only. It is further seen from the records that the petitioner again went to the same Hospital on 22.08.2002 and on 26.09.2002 advised for review on 21.12.2002. Thus, the said evidence makes it clear that the petitioner has suffered fracture and grievous injuries. The Doctor, who examined and assessed the disability suffered by the petitioner deposed as P.W.2 stating that the disability suffered by the petitioner is 35%. The Doctor also issued Ex.P10 disability certificate to that effect. It is true that P.W.2 did not give treatment to the petitioner, but he has personally examined and assessed the disability suffered by the petitioner. P.W.2 also produced Ex.P11 X-ray taken by him. According to him, the petitioner finds it difficult to walk fastly and climb staircases. P.W.2 also stated that the fractured bone has malunited. On the other hand, disputing the assessment of P.W.2 Doctor, the learned counsel for the second respondent contends that the disability assessed by P.W.2 Doctor is on the higher side, and the Tribunal erred by accepting the same. However, considering the materials available on record and the clear, categorical evidence of P.W.2, it is clear that the disability suffered by the petitioner as assessed by P.W.2 Doctor and the finding of the Tribunal that he suffered 35% disability is just and proper. The Tribunal, after fixing the disability at 35%, awarded a lumpsum amount of Rs.60,000/- under the head of permanent disability. Considering the nature of injuries and the period of treatment under gone by the petitioner as well as continuing in difficulty in walking climb staircase, it will be appropriate to award of compensation Rs.3000/- per percentage. The disability compensation is modified as $\text{Rs.3000/-} \times 35\% = \text{Rs.1,05,000/-}$ instated of Rs.60,000/- given by the Tribunal.

11-A. The learned counsel appearing for the petitioner contended that the Tribunal ought to have awarded much higher amount for pain and sufferings suffered by the petitioner who was 19 years old. Considering the said contention, in view of

the injury suffered by the petitioner, the Tribunal awarded a sum of Rs.15,000/- and the same is very low and considering the nature of injury suffered by the petitioner, it will be appropriate to give Rs.25,000/- as compensation for pain and sufferings. Accordingly, this Court is inclined to modify the award passed by the Tribunal under the different heads as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	60,000.00	1,05,000.00
2.	Medical Expenses	2,000.00	5,000.00
3.	Loss of income during treatment	7,500.00	10,000.00
4.	Transport charges	2,000.00	10,000.00
5.	Extra nourishment	2,000.00	10,000.00
6.	Pain and sufferings	15,000.00	25,000.00
7.	Loss of amenities	10,000.00	15,000.00
8.	Loss of amenities	10,000.00	10,000.00
	Total	1,18,500.00	1,90,000.00

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The Cross Objection No.3 of 2014 is allowed. The total sum of Rs.1,18,500/- awarded by the Tribunal, dated 19.12.2007 made in MCOP.No.286 of 2003 on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Judge, Fast Track Court No.III, Chennai, is enhanced to Rs.1,90,000/-. The second respondent-Insurance Company is directed to deposit the entire enhanced award amount with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the award amount and 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 award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

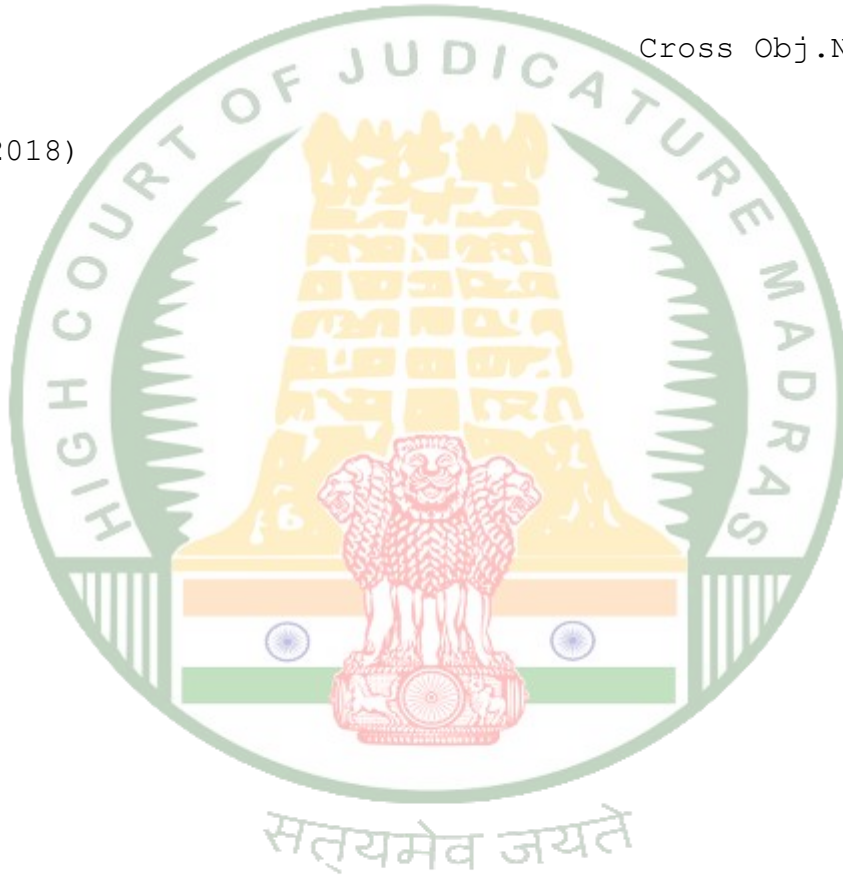
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To
The Additional District and Sessions Judge,
Fast Track Court No.III,
The Motor Accident Claims Tribunal
Chennai.

+2cc to Mr.V.MOHANCHOUDARY, Advocate, S.R.No.14287
+2cc to Mr.J.CHANDRAN, Advocate, S.R.No. 14373 & 13584

C.M.A.No.2585 of 2003
and
Cross Obj.No.3 of 2014

GP (CO)
TR(16/05/2018)



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