

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2739 of 2010

S.Nagarajan

...Appellant/Petitioner

vs

1.R.Gopal

2.National Insurance Co.Ltd.,

C-32, 2nd Avenue, Thirumangalam

Chennai-600 040

(R1 set exparte in Trial Court)

...Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 02.07.2010 made in MACT.O.P.No.2854 of 2005 on the file of Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For appellant : : Mr.M.Swamikannu

for Respondents : : Mr.G.Udaya Sankar for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 02.07.2010 made in MACT.O.P.No.2854 of 2005 on the file of Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

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 04.07.2005 at about 14.25 hours, when the petitioner was proceeding in his motorcycle bearing Reg.No.TN 10B 3787 in EVR Periyar Salai, Chennai, due to red signal, he stopped his motorcycle at the junction of Gangu Reddy Subway and at that time, a van bearing Reg.No.TN 01 R 9988 came from behind in high speed, driven in rash and negligent manner, dashed against the motorcycle. Due to that, the petitioner sustained injuries. The Petitioner claimed compensation of Rs.6,00,000/- from the respondents by stating that the driver of the van is the cause for the accident.

3. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company disputed the claim of the petitioner about the nature of the accident. It

is further stated that on the date of the accident, there was no valid fitness certificate for the van. The amount of compensation claimed is excessive. Thus the 2nd respondent/Insurance Company sought for dismissal of the Petition.

4. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert as P.W.2 and produced documents Ex.P.1 to Ex.P.9, to prove his claim. On the side of the respondents, neither oral evidence, nor documentary evidence was produced. The Tribunal, on the basis of materials placed before it, found that the accident occurred due to rash and negligent driving of the driver of the 1st respondent vehicle and further held that the insurer/2nd respondent is liable to compensate the petitioner. The Tribunal, by going through the entire evidence, granted a sum of Rs.56,000/- as compensation to the injured petitioner. Being not satisfied with the quantum of the award, the Petitioner/injured claimant, has preferred this appeal.

5. The learned counsel for the Appellant/Petitioner contended that the Tribunal erred in not awarding any amount towards loss of earning during the period of treatment. The amount awarded under various heads are very meagre. It is further contended that due to the accident, the Petitioner sustained fracture in his left hand shoulder and therefore, he could not work as before and he is entitled for higher compensation. The learned counsel thus seeks to enhance the compensation and to entertain the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the nature of injury suffered by the Petitioner is simple and the Tribunal has rightly assessed the quantum on the basis of available materials and the plea of the petitioner for enhancement is unsustainable. Thus, the learned counsel seeks dismissal of the appeal.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. Insofar as the finding regarding negligence of the driver of the 1st respondent vehicle and the liability to compensate the injured petitioner, the Tribunal, on an analysis of Ex.P.1-FIR, oral evidence of P.W.1, held that as there is no contra evidence let in by the respondents to contradict the claim of the Petitioner, the negligence of the 1st respondent vehicle driver alone as a cause for the accident. Before this court also, the said finding is not disputed and therefore, this court confirms the findings of the Tribunal as regards negligence and liability.

9. The Petitioner claims that he suffered fracture and nerve injury in his left hand shoulder; dislocation of left leg ankle and injuries all over the body. Ex.P.4 discharge summary, Ex.P.5-OP Chits and Ex.P.9-X ray are produced by the Claimant showing that he underwent treatment. P.W.2 doctor in his evidence stated that the petitioner is not able to raise his left hand above the shoulder, he cannot rotate the hand either forward or backward, there is difficulty in lifting his hand and also in carrying weight and also getting headache and giddiness. The doctor assessed the disability at 15%. According to the Petitioner, he is a carpenter by profession and the disability caused due to accident, will result in loss of income.

10. Taking into consideration the above evidence, for the disability suffered by the petitioner at 15%, it will be appropriate to give compensation at the rate of Rs.3000/- per percentage of the disability. Accordingly, the compensation towards disability is calculated as under:-

Rs.3000/- x 15% = Rs.45,000/-.

Thus, a sum of Rs.45,000/- is awarded under the head "Permanent disability". Further, taking into account the nature of injuries suffered by the petitioner and his averments to the effect that he was not able to attend his work for two months during the treatment period, this court is inclined to award Rs.15,000/-. The learned counsel for the appellant also argued that higher amount may be awarded towards Transportation and Extra Nourishment. Finding some force in the said argument, this court is inclined to award Rs.5000/- under the head "Transport to Hospital" and Rs.5,000/- under the head "Extra Nourishment". Taking into account the Medical Bills and the Physiotherapy Exercise Certificate, it will be appropriate to award Rs.15,000/- under the head "Medical Expenses".

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Permanent disability	Rs. 30,000/-	Rs. 45,000/-
2	Medical expenses	Rs. 12,000/-	Rs. 15,000/-
3	Transport to Hospital	Rs. 1,000/-	Rs. 5,000/-
4	Extra Nourishment	Rs. 2,000/-	Rs. 5,000/-
5	Damage to dress and articles	Rs. 1,000/-	Rs. 1,000/-
6	Pain and suffering	Rs. 10,000/-	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
7	Loss of income during the period of treatment	---	Rs. 15,000/-
	Total	Rs. 56,000/-	Rs. 96,000/-

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed in the terms as stated infra:-

- (i) The award of the Tribunal is enhanced to Rs.96,000/- from Rs.56,000/-
- (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) In view of the above modified enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above along with accrued interest, by filing proper application before the Tribunal, less the amount, if any already withdrawn, The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application. No cost.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Presiding Officer,
Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

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

+lcc to Mr.G.Udaya Sankar, Advocate Sr.No.6868
+lcc to Mr.M.Swamikannu, Advocate Sr.No.

C.M.A.No.2739 of 2010

VGII(CO)
sm:20.3.2018



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