

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3206 of 2010

S.Shankar

... Appellant

...vs...

1.R.Ramamurthy

3.The United India Insurance Company Ltd,
No.38, Anna Salai,
Chennai - 600 002.

...Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 18.07.2006 made in MCOP.No.3664 of 2001 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai.

For Appellant : Mr.P.Natarajan

For Respondents: Mr.C.Paranthaman for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 18.07.2006 made in MCOP.No.3664 of 2001 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. For the 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 21.10.2000 at about 6.30 p.m., while the petitioner was proceeding as pillion rider in the two wheeler bearing Registration No.TN-22-H-7144 from Velambur to Panaiyur in East Coast Road, near Mani's house in Velambur Village, a Tanker Lorry bearing Registration No.PY-01-

J-1148, proceeding from Chennai to Pondicherry, came at high speed on the wrong side of the road dashed against the two wheeler in which the petitioner was travelling causing him Head injury, Multiple contusion in Brain, injury in the Right shoulder, Right Zygoma Fracture, Contusion on both Hemisphere and multiple injuries all over the body. The accident occurred only due to the negligence of the first respondent lorry driver. At the time of the accident, the petitioner was aged 25 years old and by working as a driver was earning a sum of Rs.3,600/- per month. After the accident, due to the injuries suffered, he is not able to attend to his normal work of driver. Hence, the petitioner sought for compensation of Rs.9,00,000/- from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent-Insurance Company filed counter contending that the accident does not occur as alleged by the petitioner. The rider of the two wheeler, in which the petitioner was proceeding as pillion rider drove the vehicle in a rash and negligent manner lost control of the vehicle dashed against the rear side of the lorry resulting in the accident. Thus, the negligence of the two wheeler rider alone caused the accident. As such, the second respondent who is the insurer of the first respondent lorry is not liable to pay any compensation. The claim of the petitioner about his age, avocation and income is denied. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical expert was examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P17 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the driver of the first respondent Lorry alone caused the accident and awarded a sum of Rs.87,782/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contends that the Tribunal failed to appreciate the evidence properly and the gravity of multiple grievous injuries suffered

by the petitioner was not considered at all. The grievous injuries suffered by the petitioner has made him permanently unfit to do driving work and he has lost his known source of avocation. The Tribunal ought to have fixed the monthly income of the petitioner at Rs.3,000/-, but failed to do so. The petitioner has suffered 100% permanent functional disability, the Tribunal failed to provide appropriate compensation as claimed by the petitioner. Hence, the petitioner sought for enhancement of the award amount by allowing this appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the accident occurred only due to the negligence of the rider of the two wheeler, in which the petitioner was proceeding and as such the second respondent is not liable to pay any compensation. The claim of the petitioner about the age, avocation and income is not established. The owner and insurer of the two wheeler ought to have been made parties to the petition, but the petitioner failed to do so. The award passed by the Tribunal is on the higher side. Thus, the second respondent Insurance company sought for dismissal of this appeal.

10. The petitioner who deposed as P.W.1 clearly stated that on the occurrence date on 21.10.2000 at about 6.00 p.m., while he was proceeding as a pillion rider in the two wheeler bearing Registration No.TN-22-H-7144 from Velambur to Panaiyur, a Tanker Lorry bearing Registration No.Py-01-J-1148 came at high speed in a rash and negligent manner dashed against the two wheeler in which the petitioner was travelling causing him Head injury, Right Shoulder injury, Multiple contusion in Brain, Right Zygoma Fracture, Contusion on both Hemisphere and multiple injuries all over the body. Thus, the petitioner contends that the negligence of the first respondent lorry driver alone caused the accident. The respondent has not examined either the driver of the lorry or any other person to contradict the evidence of P.W.1. Further, the police also registered a case against the first respondent lorry driver only in Sunambedu Police Station Crime No.418 of 2000 as evidenced by Ex.P14 copy of the First Information Report. Further, nothing is elicited in the cross examination of P.W.1 to discredit his version of the accident. The second respondent Insurance Company failed to produce any investigation report or any other materials to disprove the petitioner's claim about the manner in which the accident occurred. As such, on the available evidence let in by the petitioner, it is apparent that the negligence of the first respondent lorry driver alone caused the accident.

11. The petitioner states that the offending vehicle belongs to the first respondent and the same was insured with the second respondent. The petitioner produced his driving licence as Ex.P17. As such in the absence of any contra evidence

by the respondents, it is clear that the offending vehicle is owned by the first respondent insured with the second respondent.

12. The petitioner states that he was aged about 25 years and was working as driver at the time of accident. He produced the School Transfer Certificate as Ex.P9 and driving licence of the petitioner produced as Ex.P17 showing that his date of birth is 01.05.1974. It is therefore clear from the same, the petitioner was aged 25 years.

13. As stated earlier, the petitioner claims that he suffered Head injury, Right Shoulder injury, Multiple contusion in Brain, Right Zygoma Fracture, Contusion on both Hemisphere and multiple injuries all over the body. He underwent treatment as inpatient in Government Hospital, Chennai from 21.10.2001 to 31.11.2001 as evidenced by Ex.P1 Discharge Summary. The petitioner produced the private treatment records as Ex.P2. Subsequently, the petitioner underwent treatment in Adi Parasakthi Hospital, Melmaruvathur and to prove the same produced Ex.P3 records. It is also evident from Ex.P4 medical records that the petitioner underwent treatment in Zipmer Hospital, Pondicherry. The petitioner also produced the letter given by the Adhiparasakathi eye hospital as Ex.P5. According to him, the right side of his body is totally affected and he is unable to attend even his day to day work. The sight in his right side eye is affected. The petitioner was also present before this Court at the time of hearing of the appeal. Pointing it out, the learned counsel appearing for the petitioner contended that being a driver, as the right side of the body is totally non functional, the petitioner is not in a position to perform driving and as such the disability should be calculated at 100%.

14. The Doctor, who assessed the disability suffered by the petitioner, while deposing as P.W.2 stated that he examined the petitioner on 03.02.2005 and as per his assessment, petitioner eye has lost eye sight in his right eye and the disability suffered by the petitioner is 30%. The disability certificate issued by him is marked as Ex.P15. Likewise, the other Doctor who examined the petitioner while deposing as P.W.3 clearly stated that due to contusion in brain, the right hand and right leg of the petitioner is not functioning properly and his left hand is also affected. The Doctor assessed the disability of the left hand at 20%, right hand at 30% and disability in respect of the right leg at 50%. P.W.3 issued disability certificate Ex.P16. Both the Doctors admittedly, they did not treat the petitioner, but, they have clearly stated that on personal examination they have assessed the disability. Both Doctors have clearly stated that the disability suffered by the petitioner in his right eye as well as right hand and right leg is not curable even if further treatment is given. It is

therefore clear from the evidence of medical experts and the documents produced by the petitioner that the petitioner has suffered permanent disability which clearly affect his functional capacity to act as driver. In such circumstances, the petitioner claims that the disability should be assessed at 100%.

15. The petitioner while deposing as P.W.1 produced his driving licence as Ex.P17 and stated that he was earning a sum of Rs.5,000/- per month by working as driver. Now, due to his right leg and right hand being paralysed, he is not able to even walk properly. As stated earlier, his right eye is also affected. It is therefore clear that he will not be able to perform the duty of driver. The petitioner has not produced any proof of his income. However, considering the fact that he was a qualified driver and was working in that capacity, it will be appropriate to fix the monthly salary of the petitioner is Rs.5,000/- per month. Considering the nature of injuries suffered by the petitioner and percentage of the disability as stated by the medical experts P.W.2 and P.W.3, it is apparent that the petitioner future as a driver is totally affected. Thus, applying multiplier method to calculate the compensation will be appropriate. At the time of the accident, the age of the petitioner was 25. Hence, the multiplier to be applied 18. On the basis of available evidence, the functional disability fixed at 60%. Hence, applying the multiplier method compensation for the permanent disability is calculated as follows. $\text{Rs.5,000/-} \times 60\% \text{ of permanent disability} = \text{Rs.3,000/-} \times 12 \text{ months} = 36,000/- \times 18 = \text{Rs.6,48,000/-}$. The Tribunal only awarded a sum of Rs.8,000/- under the head of pain and sufferings. Considering the nature of injuries suffered by the petitioner and period of treatment underwent by the petitioner, a sum of Rs.40,000/- is hereby awarded under the head of pain and suffering instead of Rs.8,000/- is awarded by the Tribunal. Ex.P7 Medical bills is produced for a sum of Rs.3,288/-. Considering the nature of injuries suffered by the petitioner, it will be appropriate to grant Rs.5,000/- under the head of medical expenses. Further, a sum of Rs.20,000/- is granted towards extra-nourishment and a sum of Rs.10,000/- is granted towards transportation charges. Considering the nature of injuries suffered by the petitioner and also the petitioner suffered total paralysed of his right side of the body, a sum of Rs.40,000/- is granted towards loss of amenities of life. Considering the nature of treatment, the petitioner need a attender, hence a sum of Rs.10,000/- is granted towards attender charges. Thus, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income	6,000.00	-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
2.	Transport Charges	3,000.00	10,000.00
3.	Extra-nourishment	2,500.00	20,000.00
4.	Medical Bills	3,282.00	5,000.00
5.	Pain and sufferings	8,000.00	40,000.00
6.	Permanent Disability	55,000.00	6,48,000.00
7.	Loss of earning power	10,000.00	-
8.	Loss of Amenities	-	40,000.00
11.	Attender charges	-	10,000.00
	Total	87,782.00	7,73,000.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.7,73,000/-.

16. In the result, this appeal is partly allowed. No costs. The sum of Rs.87,782/- awarded by the Tribunal dated 18.07.2006 made in MCOP.No.3664 of 2001 on the file of the Motor Accident Claims Tribunal/III Judge, Small Causes Court, Chennai is hereby enhanced to Rs.7,73,000/-. The second respondent Insurance Company is directed to deposit the entire modified award amount of Rs.7,73,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, 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 entire award amount with accrued interest by filing necessary application before the Tribunal.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

The III Judge,
Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.

+1 CC to Mr.P. Natarajan, Advocate sr 22185.

+2 cC to Mr.C. Paranthaman, Advocate sr 22182.

C.M.A.No.3206 of 2010

SP(25/04/2018)