

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2261 of 2013
and M.P.No.1 of 2013

The New India Assurance Co.Ltd.,
Having Head Office at 161-A,
East Veli Street, Madurai

..Appellant/
3rd respondent.

-Vs-

1.Kannan

..1st respondent/
Petitioner

2.T.Devendran

3.C.Devaraj

..2nd and 3rd Respondents
/Respondents 1 and 2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 15.09.2012 made in M.C.O.P.No.49 of 2011 on the file of Motor Accident Claims Tribunal, (Sub Court), Perundurai.

For appellant : : Mr.S.Manohar

For Respondents : : Mr.R.Nalliyappan for R1.

R2 and R3-Set exparte before the Tribunal.

J U D G M E N T

The Appellant is the Insurance company, who is the 3rd respondent before the Tribunal, has filed this appeal challenging the Judgment and decree dated 15.09.2012 made in M.C.O.P.No.49 of 2011 on the file of Motor Accident Claims Tribunal, (Sub Court), Perundurai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 12.01.2011 while the petitioner was proceeding as pillion rider in the two wheeler bearing Reg.No.TN-58-Z-3623 driven by one Selvam in Madurai to Theni Main road from east to west, at about 9.45 a.m., while they were going near

Chellannurani R.Kokulam Pirivu, a JCB vehicle bearing Reg.No.PY-01-Y-8860 which was stationed on the left side of the road, was suddenly moved and turned towards right side by the 1st respondent in a careless manner without caring for the oncoming vehicles. Due to the said sudden act of the 1st respondent, the bucket in front of the JCB hit the Petitioner due to which he fell down on the road. The accident occurred only due to negligence of the 1st respondent. The Petitioner suffered bone fracture as well as multiple grievous injuries. After taking first aid in a private hospital at Kokulam, the petitioner was taken to Government Hospital, Madurai and then to Coimbatore Medical Hospital at Coimbatore, where he was given treatment as inpatient for one month. The Petitioner suffered grievous injuries; bone fracture at left leg, multiple bone fracture of left knee and injury in eyebrow. According to the Petitioner, he could not move around and carry on his business due to the injury suffered by him. The Petitioner is stated to be aged 40 years, working as Commission Agent and earning Rs.15,000/- per month. The Petitioner sought for Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The claim of the Petitioner about his age, avocation and income is to be proved by him. The accident occurred only due to negligence of the Petitioner. The claim of the Petitioner is highly excessive. The 3rd 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, produced documents Ex.P.1 to Ex.P.13 to prove his claim. On the side of the 3rd respondent, neither oral nor documentary evidence was let in. The Tribunal, after analysing the evidence on record, found negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.2,20,500/- payable by the respondents 1 to 3 to the Petitioner.

5. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance company has come forward with the present appeal.

6. Heard both sides.

7. The learned counsel appearing for the 3rd respondent/Insurance company/appellant contends that the Tribunal wrongly fixed the disability at 25% and adopted multiplier method which is unwarranted. The Petitioner having not suffered any functional disability, there is no need to

adopt multiplier method. The amount awarded by the Tribunal under different heads is excessive. Thus, the 3rd respondent/Insurance company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

8. Per contra, the learned counsel for the Petitioner/claimant contends that having suffered multiple grievous injuries and permanent disability, he is entitled for higher amount as compensation. The award passed by the Tribunal is just and proper and there is no need to interfere with the same. Thus, the Petitioner/claimant seeks for dismissal of the appeal.

9. The Petitioner while deposing as P.W.1 stated that on 12.01.2011 at 9.45 a.m., while he was proceeding as pillion rider in the two wheeler bearing Reg.No.TN-58-Z-3623 driven by one Selvam, while going near Sekkanurani, the JCB vehicle which was parked on the left side of the road, suddenly moved into the road, resulting in the front bucket of the JCB hitting the petitioner which caused injuries to him. The negligence of the 1st respondent driver alone caused the accident. The petitioner also produced copy of the FIR filed against the 1st respondent as Ex.P.1 and the copy of the charge sheet as Ex.P.6. The Petitioner also produced copy of the Observation Mahazar and Rough sketch of the spot as Ex.P.2 and Ex.P.3. It is clear from the same that negligence of the 1st respondent JCB driver alone is the cause for the accident. Further, no contra evidence was let in by the respondent to disprove the claim of the Petitioner. In such circumstances, the conclusion of the Tribunal that the negligence of the 1st respondent driver alone caused the accident is appropriate, just and proper. There is no need to interfere with the same.

10. The Petitioner stated that he suffered fracture in his left ankle and left knee. He also suffered bleeding injuries in his right hand and left eyebrow. To prove the same, he produced the wound certificate as Ex.P.5 and the Discharge summary issued by Government Hospital, Coimbatore as Ex.P.9. The Petitioner also examined the Medical expert as P.W.2 and he stated clearly that on examination of the Petitioner, he found Tibia fibula bones was fractured and malunited. P.W.2 on the basis of physical examination and also by considering Ex.P.13-X ray assessed the disability suffered by the Petitioner at 25%. In the absence of any contra evidence, the physical disability assessment of P.W.2 / doctor has to be accepted in full. Thus, the disability suffered by the Petitioner is fixed at 25%. However, there is nothing on record to show that the Petitioner suffered any functional disability. As such, the contention of the 3rd respondent/Insurance company that there is no need to adopt multiplier method and it will be appropriate to apply

percentage method to compensate the petitioner is to be accepted. Hence, the disability compensation is to be provided at the rate of Rs.3000/- per percentage instead of multiplier method adopted by the Tribunal. Thus, the disability compensation is calculated as follows:-
 $\text{Rs.3000/-} \times 25\% = \text{Rs.75,000/-}$.

11. Considering the period of treatment undergone and the nature of injury suffered, it will be appropriate to provide higher amount towards pain and suffering and nutritious food for the petitioner than the amount provided for by the Tribunal.

Thus, the compensation for pain and suffering is enhanced to Rs.25,000/- and for nutritious food from Rs.5000/- to Rs.10,000/-. The Petitioner claims that he was employed as a Commission Agent, earning Rs.15,000/- per month. He was stated to be 40 years old. At the time of accident. However, there is no proof about his avocation and income. As such, the Tribunal fixed the notional income of the Petitioner at Rs.4500/- per month. The same is appropriate. Considering the nature of injury suffered, he could not have attended to his normal avocation for atleast three months. Hence, for loss of earning during treatment period, he is entitled for $\text{Rs.4500/-} \times 3 = \text{Rs.13,500/-}$.

12. Keeping in mind the fact that the Petitioner suffered fracture and underwent treatment as inpatient and also outpatient, he would have needed an attender to perform his normal daily routine. Therefore, a sum of Rs.10,000/- is provided for "Attender charges". The compensation amount provided by the Tribunal towards "Transportation expenses" at Rs.3000/- is confirmed. Thus, the award passed by the Tribunal is modified as shown below:-

Sl. No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	2,02,500/-	75,000/-
2.	Transport expenses	3,000/-	3,000/-
3.	Nutritious food	5,000/-	10,000/-
4.	Pain and suffering	10,000/-	25,000/-
5.	Attender charges	---	10,000/-
6.	Loss of earning during treatment period	---	13,500
	Total	2,20,500/-	1,36,500/-

13. In the result,
 (i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The Award amount is reduced to Rs.1,36,500/- from Rs.2,20,500/-

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

(iv) This court, by order dated 25.09.2013, directed the appellant/insurance company to deposit 50% of the award amount with cost and interest, less the amount already deposited. Hence, the appellant/Insurance company is directed to satisfy the modified award of this Court, within six weeks from the date of receipt of a copy of this order.

(vi) On such deposit, the claimant is entitled to withdraw the same by filing necessary application before the Tribunal. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Subordinate Judge,
Perundurai.[Motor Accident Claims Tribunal]

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

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No. 52019
+1cc to Mr.S.Manohar, Advocate, S.R.No. 51805

C.M.A.No.2261 of 2013

PVS (CO)
GN(24/01/2019)