IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2302 of 2012

B.Athiappan ... Appellant /Claimant

..vs..

1.L.Bharathi

2.Bajaji Allianz General Insurance Co. Ltd.,
No.25/26, Prince Towers, College Road,
Nungambakkam, Chennai-6
... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 16.02.2012 made in MCOP.No.386 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Poonamallee.

For Appellant : Mr.P.Natarajan

For Respondents : Mr.R.Rathana Thara for R-2
R1 Exparte Before Tribunal

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 16.02.2012 made in MCOP.No.386 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Poonamallee, 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 06.12.2008 at about 12.30 hours, as the petitioner was riding his two wheeler

bearing Registration No.TN-10-D-0903, from East to West in Vijayaraghavapuram 5th Street, Chennai, a Car bearing Registration No.TN-09-AS-4484 came at high speed in the opposite direction dashed against the two wheeler in which the petitioner was proceeding causing him multiple grievous injuries. The accident occurred only due to the rash and negligent driving by the driver of the first respondent car. At the time of the accident, the petitioner was aged about 40 years and as self employed person was earning a sum of Rs.7,000/- to Rs.10,000/- per month by running a provisional store. Due to the injuries suffered, the petitioner is not able to attend his work regularly. Thus, the petitioner seeks a sum of Rs.3,00,000/- as compensation 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 driver of the first respondent car did not posses valid driving licence and he was charge sheeted under Section 3 of Motor Vehicles Act and the owner of the vehicle was charge sheeted under Section 5 of the Motor Vehicles Act. Thus, the second respondent contends that they are not liable to pay any compensation. The accident does not occur due to the negligence of the first respondent driver. The petitioner alone caused the accident due to his negligence. The claim of the petitioner about his avocation and income is disputed. The claim of the petitioner is exorbitant. Thus, the second respondent 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 produced documents Ex.P1 to Ex.P12 and M.Os.1 to 4 to prove his claim. On the side of the respondents, R.W.1 to R.W.4 was examined and documents Ex.R1 to Ex.R6 were produced to prove their claim.

6. The Tribunal, on the basis of materials available on record, found the driver of the first respondent car alone caused the accident and awarded a sum of Rs.1,36,905/- 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 and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contends that the Tribunal, without

appreciating the medical evidence properly, reduced the disability fixed at 40% by P.W.2 Doctor into 30% without any valid reason. The Tribunal ought to have held that the petitioner suffered 100% loss of future earning capacity due to the injury suffered by him. The Tribunal failed to provide any amount towards future prospects. The amount awarded by the Tribunal under the different heads are very low. Hence, the petitioner seeks to enhance the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the award passed by the Tribunal itself is on the higher side and as there is violation of policy condition, they are not liable to pay any compensation to the petitioner. Hence, the second respondent-Insurance Company sought for dismissal of the appeal.

10. The petitioner who deposed as P.W.1 clearly stated that the first respondent car driver alone came at high speed dashed against the two wheeler resulting in the accident. The police have registered Ex.P1 First Information Report against the driver of the first respondent vehicle only. The respondents produced the copy of the charge sheet laid by the police after investigation as Ex.R6. Considering the evidence available on record, it is clear that the accident occurred only due to the rash and negligent driving of the first respondent vehicle driver alone.

11. Before the Tribunal, the second respondent-Insurance company contended that the driver of the car was not having valid driving licence and he was charge sheeted under Section 3 of the Motor Vehicle Act and the owner of the vehicle was charge sheeted under Section 5 of the Motor Vehicles Act. Thus, the second respondent-Insurance Company contends that they are not liable to pay any compensation and only the Insurer and the owner is liable to pay compensation if any awarded by the Court. The respondent also examined R.W.1 who produced the particulars relating to driving licence as Ex.R4. It is clear from Ex.P10 that the petitioner was having valid driving licence. It is also evident from Ex.P11 copy of the Insurance police that the offending vehicle was insured with the second respondent insurance company. As such, it is clear that the offending vehicle was having valid policy coverage. In such circumstances, the only contention of the second respondent is that there is violation of policy condition since the first respondent permitting a person to drive the vehicle. On the side of the respondents, the staff of the insurance company deposed as R.W.1 and produced documents Ex.R1 to Ex.R6 to prove the same. It is clear from the documents produced by the respondents particularly Ex.R4 driving licence details that the driver of the offending vehicle was not having valid driving licence. As

such, the contention of the second respondent that they are not liable to pay any compensation to the petitioner is just and proper. However, as the policy was in force, they are bound to pay the award amount at the first instance then they recover the same from the first respondent/owner of the offending vehicle.

12. The petitioner stated that he suffered Right leg femur fracture, Communited distal femur with inter-condylar and multiple injuries all over the body. The petitioner also examined the Doctor who issued Ex.12 Disability Certificate to prove the nature of injuries and disability suffered by him. According to P.W.2, the disability suffered by the petitioner is 40%. However, the Tribunal, considering the nature of injuries and other circumstances, fixed the disability of the petitioner at 30%. Further, the Tribunal awarded a sum of Rs.1000/- per percentage for the disability suffered by the petitioner. The learned counsel appearing for the petitioner contended that the same is very low and same requires to be modified. Even though the petitioner suffered partial permanent disability, there is no evidence to show that the petitioner is suffering from function disability. The petitioner was carrying on business or provisional store and no materials is placed before the Court to show that he was prevented from carrying on the same business after the accident. As such, the Tribunal is justified in adopting percentage formula and not the multiplier method to assess the loss caused due to disability. However, considering fact that the accident occurred during 2008, it will be appropriate to compensate the disability suffered by the petitioner at the rate of Rs.2,000/- per percentage. Accordingly, the loss of disability is calculates as follows. Rs.2,000/- x 30% = Rs.60,000/- as compensation for disability.

13. It is clear from Ex.P3 discharge summary that the petitioner took treatment as inpatient from 06.12.2008 to 13.02.2008. Considering the nature of treatment taken by the petitioner for the injuries, he would have taken rest for some time and could not have attended to his business for two months. Thus taking his notional monthly income as Rs.5,000/- per month, it will be appropriate to provide for Rs.10,000/- for loss of income for the period of two months. Taking in to consideration the fact that the petitioner has suffered 30% partial permanent disability and also multiple injuries all over the body, he would have suffered heavy pain and also suffered heavy pain. In view of the fact that the amount awarded by the Tribunal under the head of pain and suffering is enhanced to Rs.20,000/- . Hence, the amount awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of Income	5,000.00	10,000.00
2.	Medical Expenses	86,905.00	86,905.00
3.	Transport to Hospital	5,000.00	10,000.00
5.	Extra-nourishment	5,000.00	10,000.00
6.	Pain and sufferings	5,000.00	20,000.00
7.	Loss of Disability	30,000.00	60,000.00
	Total	1,36,905.00	1,96,905.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.1,96,905/-.

14. In the result, this civil miscellaneous appeal is partly allowed. No costs. The sum of Rs.1,36,905/- awarded by the Tribunal dated 16.02.2012 made in MCOP.No.386 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Poonamallee, is enhanced to Rs.1,96,905/-. The 2nd respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs.1,96,905/- with interest at the rate of 7.5% p.a. 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 and then the 2nd respondent-Insurance Company is entitled to recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Fast Track Court No.I,
The Motor Accident Claims Tribunal
Poonamallee.

2. The Section Officer,
   VR Section, High Court,
   Madras.

+1cc to Mr.R.Rathana Thara, Advocate SR.No.20023
+1cc to Mr.P.Natarajan, Advocate SR.No.19325

C.M.A.No.2302 of 2012

NRI(CO)
GN(08/06/2018)