

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3152 of 2007

and

M.P.No.1 of 2007

National Insurance Co.Ltd.,
No.94/34, Dr.Nanjappa Road,
Coimbatore - 641 018.

..Appellant/ 2nd Respondent

Versus

1.R.Karthick (died) .. 1st Respondent /Claimant
2.S.Anbazhagan .. 2nd Respondent / 1st Respondent
(2nd respondent ex-parte in lower Court and
hence notice may be dispensed with)
3.Shanthi
(R3 brought on record as LR of the deceased
1st respondent viz., R.Karthick vide Court order
dated 13/06/2018 made in MPs. 1 to 3/2014 in
CMA.No.3152/2007) ..3rd Respondent/LR of 1st Respondent
(LR of Deceased Claimant)

Civil Miscellaneous Appeal filed under section 173 of
Motor Vehicles Act, 1988, against the judgment and decree
dated 22.01.2007 made in M.C.O.P.No.1179 of 2005 on the file
of the Motor Accident Claims Tribunal, Subordinate Court,
Coimbatore.

For Appellant : Mr. N.Vijayaraghavan
For Respondents : Mr. Veeraraghavan [for R3]
R2 Exparte
R3 Died

J U D G M E N T

The Appellant/Insurance Company has filed this appeal
against the judgment and decree dated 22.01.2007 made in
M.C.O.P.No.1179 of 2005 on the file of the Motor Accident
Claims Tribunal, Subordinate Court, Coimbatore.

2. For the sake of convenience, the parties are referred
to hereunder according to their litigative status before the
Tribunal. The case of the petitioner/claimant is that on

14.04.2005 while the petitioner/claimant and his friend were returning to Mettupalayam, in the two wheeler bearing Registration No.TN-39-Y-7581 driven by the petitioner/claimant, while going near Jadaiyampalayam Pirivu Road Bridge, the 1st respondent car bearing Registration No.TN-39-AA-5862 came at high speed in the opposite direction dashed on the petitioner/claimant bike and he was thrown away along with the pillion rider, causing him multiple grievous injuries. The accident occurred due to the negligence of the 1st respondent vehicle driver only. The petitioner/claimant suffered multiple fractures and severe head injury. He was taken to Private Hospital, Mettupalayam and after getting first-aid was admitted in the Government Hospital, Mettupalayam, Coimbatore, where he underwent treatment for 70 days as inpatient from 14.04.2005 to 22.06.2005. He was suffering from paralysis on the left side of the body. Even though, the petitioner/claimant was discharged on 22.04.2005, he was unable to move his limbs and he was not able to speak a single word or identify his close relatives. He was in semi conscious state and as per the Doctor opinion, he will not recover fully. The petitioner/claimant was only 25 years old when he met with the accident. At that time by working as a Salesman in a private concern, he was earning Rs.2,500/- per month and daily batta of Rs.40/-. Thus, the petitioner/claimant states that due to the injury suffered, he is unable to carry on his avocation and suffering from loss of income. Thus, the petitioner/claimant sought for a sum of Rs.6,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the 2nd respondent/Insurance Company contends that on the date of accident, the Insurance Policy of the car bearing Registration No.TN-39-AA-5862 was in force, but the accident did not occur in the manner alleged by the petitioner/claimant. The claim of the petitioner/claimant about the age, avocation, income, nature of injury and disability suffered is denied. The petitioner/claimant's claim for compensation is on higher side. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

4. Before the Tribunal, the petitioner/claimant examined P.Ws.1 to 5, produced documents Exs.P.1 to P.33 to prove his claim. On the side of the respondents R.Ws.1 to 3 was examined and Exs.R.1 to R.7 were marked. The Tribunal, after analysing the available evidence on record found that the negligence of the 1st respondent driver alone caused the accident passed an award for a sum of Rs.4,35,250/- payable by the respondents to the petitioner/claimant. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly. It is the case of hit and run, but the petitioner/claimant had subsequently fabricated the case with the help of relatives by manipulating eye-witness and other things. The learned counsel further submitted that the claimant has fallen of his own and subsequently to get monetary benefits a false case has been registered. The amount claimed under different heads is highly exorbitant. The 2nd respondent/Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the petitioner/claimant contends that the accident occurred due to the negligence of the 1st respondent driver causing multiple injuries. The Tribunal, considering the physical disability suffered by the petitioner/claimant has passed an award providing just and fair compensation. There is no need or necessity to interfere with the same. Thus, the petitioner/claimant seeks for dismissal of the appeal.

8. Before the Tribunal, an eye-witness to the occurrence who deposed as P.W.2 clearly stated about the manner in which the accident occurred. The Police have registered Ex.P.1 - F.I.R against the 1st respondent vehicle driver only. After completing the investigation charge sheet was laid against the same person as evidenced by Ex.P.3 - Copy of the charge sheet. Further, the driver of the 1st respondent vehicle admitted his guilt and paid fine amount in the Criminal case as evidenced by Ex.P.7 - Copy of the Criminal Court Judgment. The petitioner/claimant also produced copy of the rough sketch of the occurrence spot as Ex.P.4 which corroborates the claim of the petitioner/claimant. It is also clear from Exs.P.5 and P.6 - MVI reports that there was no mechanical defect in either of the vehicles involved in the accident. It is further clear from the evidence of P.W.1 as well as the eye-witness account given by P.W.2 and the contents of Ex.P.1 - F.I.R, Ex.P.3 - Charge sheet and Ex.P.7 - Judgemnt copy that the negligence of the 1st respondent vehicle driver alone caused the accident.

9. Even though the respondents contended that the accident did not occur in the manner alleged by the petitioner/claimant and after the accident, to get compensation the petitioner/claimant has falsely created all the documents and evidence to file the case, as rightly pointed out by the Tribunal, the F.I.R was registered on the next day of the accident itself and the reason for lodging the complaint belatedly on the next day is stated by P.W.2 himself who had lodged the complaint. Even though, the respondent contended that CBI is investigating about the false case

registered on the basis of the complaint given by P.W.2, there is no material produced by the respondents to show any investigation by CBI is pending. There is no evidence or material found on record to show that any steps was taken to set aside the F.I.R or the charge sheet filed against the 1st respondent vehicle driver. Apart from that, the driver himself has admitted his guilt and paid the fine amount. Further nothing is found in Ex.R.7 - Investigation Report filed by the 2nd respondent/Insurance Company official to conclude that a false case has been registered against the 1st respondent driver and as such, the conclusion of the Tribunal, on the basis of available evidence on record that the negligence of the 1st respondent-driver alone caused the accident, is just and proper and there is no need to interfere with the same.

10. The petitioner/claimant who deposed as P.W.1 clearly stated about the injury suffered by him. He also examined the Doctors who assessed disability as P.Ws.3 and 4. The disability certificate is marked as Ex.P.30. There is no contra evidence available on the side of the respondents, to disprove the medical evidence let in by the petitioner/claimant. It is clear from Exs.P.8 and P.30 that the petitioner/claimant suffered 75% disability. In the absence of any contra evidence, the Tribunal has accepted the same and provided a sum of Rs.75,000/- towards permanent disability.

11. Considering the evidence on record, especially Ex.P.32 - Salary certificate, the Tribunal fixed the monthly salary of the petitioner/claimant at Rs.2,500/- and provided loss of income for a period of 136 days. The same is appropriate. Similarly, the Tribunal has provided a sum of Rs.2,08,000/- for medical expenses on the basis of Exs.P.13 to P.19 and Ex.P.26. It is clear from the above said discussion, that there is no need to modify or alter the same. Similarly, the amount Awarded under other heads by the Tribunal is appropriate. Thus, the quantum of Award passed by the Tribunal as given below is confirmed.

Sl. No.	Head	Amount granted by the Tribunal (Rs.)
1	Permanent Disability	75,000.00
2	Transport Expenses	1,000.00
3	Nutritious	3,000.00
4	Medical Expenses	2,08,000.00
5	Mental Agony	5,000.00
6	Attender charges	2,000.00
7	Pain and Suffering	20,000.00
8	Loss of income for 136	11,250.00

Sl. No.	Head	Amount granted by the Tribunal (Rs.)
9	Future Medical Expenses	10,000.00
10	Loss of future income	1,00,000.00
	Total	4,36,250.00

12. Considering the nature of injury suffered by the petitioner/claimant, this Court does not find any reason to interfere with the award passed by the Tribunal as claimed by the 2nd respondent/Insurance Company. Hence, the Appeal has to fail. Point is answered accordingly.

13. In the result, the Award passed by the Tribunal is confirmed and the Appeal is dismissed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bri
To

1. The Subordinate Judge, Coimbatore.
2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 46674

+1cc to Mr.Veeraraghavan , Advocate SR.No. 46439

C.M.A.No.3152 of 2007

ASK (02/11/2018)

सत्यमेव जयते

WEB COPY