

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2487 of 2013

The New India Assurance Co. Ltd.,
Having its Branch Office at Ist Floor,
No.490-A, Avinashi Road, Peelamedu,
Coimbatore. Appellant/2nd Respondent

..vs..

1.S.Manickam 1st Respondent/petitioner
2.P.Sakthivel 2nd Respondent/1st Respondent
(2nd Respondent herein Remained
Exparte before lower court.)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 26.03.2012 made in MCOP.No.173 of 2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Erode.

For Appellants : Mr.S.Jayasankar

For Respondents: Mr.R.Nalliyappan for R-1

JUDGMENT

The second respondent/Insurance Company has come forward this appeal, as against the award of Rs.4,22,800/- to the petitioner/claimant, in respect of the injuries suffered by him, by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Erode dated 26.03.2012 made in MCOP.No.173 of 2011.

2. For 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 21.01.2011 at about 6.00 p.m., while the petitioner was riding his Motor Cycle in Dharapuram - Palladam Road at a moderate speed and as he approached Palanisamy Gounder's Farm, in order to cross the road, he was waiting at the road junction. At that time, a car owned by first respondent bearing registration No.TN-37-AZ-4564

came from east to west at high speed, driven in a rash and negligent manner and dashed against the petitioner's motor cycle causing several fractures in his right leg, right foot and also caused crush injuries as well as fracture in right toe. The petitioner states that the accident occurred only due to the negligence of the first respondent driver. At the time of accident, the petitioner was working as Carpenter and earning a sum of Rs.12,000/- per month. Due to the permanent disability suffered by the petitioner, he is unable to attend to his avocation and he suffered loss of income. As such the petitioner sought for compensation of Rs.7,00,000/- 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 a counter contending that they have not informed about the accident by the first respondent and as such they are not liable to pay any compensation. The claim of the petitioner about the manner of accident and injuries suffered by him is to be proved by the petitioner. The nature of treatment under went by the petitioner and other things are disputed. The petitioner has to prove the claim about his avocation, income and loss of earning capacity. The claim of the petitioner is excessive and exorbitant. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P15 to substantiate his claim. On the side of the respondents, neither oral nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.4,22,800/- as compensation. Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has come forward with this present appeal seeking to set aside the award passed by the Tribunal by entertaining the appeal.

7. Heard both side counsel and perused the materials available on record.

8. The learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal has wrongly adopted the multiplier theory and that there has been no functional disability suffered by the petitioner. The loss of income calculated on the basis of 42% disability suffered by the petitioner is not proper. The monthly income of the petitioner was fixed by the Tribunal arbitrarily as Rs.7,000/-. The accident occurred due to contributory negligence of the petitioner himself and the amount awarded by the Tribunal under the various head is excessive. Thus, the second respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner contends that the petitioner suffered multiple fracture and he took treatment as inpatient for a long time as inpatient as well as out patient and he is unable to sit down and walk freely. The learned counsel appearing for the petitioner further contended that as Carpenter by profession, due to the disability suffered, the petitioner is unable to attend to his work normally and as such the compensation awarded by the Tribunal is fair and reasonable and nominal. Hence, the petitioner seeks dismissal of this appeal.

10. The issue that arises for consideration in this appeal is whether the Tribunal is correct in granting the compensation by applying multiplier theory method and arriving at compensation.

11. The petitioner, who deposed as P.W.1 stated that he was working as carpenter and after the accident, the movement of his right knee is completely restricted and ankle movement is also reduced. As per the deposition of the petitioner, he suffered fracture in the right leg and several injuries on him. He also underwent treatment in Dheepa Hospital, Tiruppur. The medical expert, who deposed as P.W.2 stated that the petitioner suffered fracture in his right leg and ankle bone of the right leg and another fracture in the right foot. Due to the said fractures, the movement of the right knee is almost nil and the ankle movement is restricted to great extent. P.W.2 also stated that the petitioner's right leg is 1 c.m., short than his left leg and the right leg muscles of the petitioner have lost its strength. According to P.W.2, fibula and tibia bones have not united properly. P.W.2 also stated that the petitioner will not be able to sit with legs crossed and he cannot stand on his right leg. Thus, P.W.2, the Doctor stated that the petitioner suffered 42% permanent disability and issued certificate to that effect which is marked as Ex.P14.

12. The Tribunal taking into consideration the fact that the petitioner was carpenter by profession and the same will require him to squat and sit with his leg crossed todo work of the carpenter and as the petitioner will find difficult to sit down, he has suffered loss of earning capacity. The Tribunal, taking into consideration the nature of injuries suffered by the petitioner, fixed 42% permanent disability. It is also held that due to permanent disability suffered by the petitioner, his earning capacity will com down by 30%. This conclusion is challenged by the second respondent Insurance Company.

13. The learned counsel appearing for the second respondent Insurance Company contended that it is only partial permanent disability and it will not disable the petitioner from attending to his work. As rightly held by the Tribunal that the petitioner being carpenter, the movement of his legs and hands should be fully functional, so that he can attend to his work freely. The Tribunal has categorically held that due to 40% permanent disability, the petitioner would have suffered loss of earning capacity to the extent of 30%. Further, when the individual, who is carpenter by profession suffered 30% loss of earning capacity, it will be only appropriate to apply the multiplier method and the Tribunal has correctly adopted the multiplier method. The petitioner was aged about 48 years at the time of the accident. Hence, the loss of permanent disability is calculated as follows:- Rs.5000/- (monthly income) x 30% (permanent disability) = Rs.1500/-. Rs.1500/-(30% disability) x 12 x 14 Rs.2,52,000/-. The loss of income due to permanent disability would be Rs.2,52,000/-. Considering the nature of injuries suffered by the petitioner, the following amount is to be given under the different heads.

Permanent Disability	:	Rs. 2,52,000/-
Pain and suffering	:	Rs. 20,000/-
Medical Expenses	:	Rs. 10,000/-
Extra-nourishment	:	Rs. 16,000/-
Transportation	:	Rs. 10,000/-
Attender Charges	:	Rs. 10,000/-

Total	:	Rs.3,18,000/-

14. In view of the above modification, the civil miscellaneous appeal is partly allowed with costs. The total sum of Rs.4,22,800/- awarded by the Tribunal in M.C.O.P.No.173 of 2011 dated 26.03.2012 on the file of the MACT/Chief Judicial Magistrate Court, Erode, is reduced to Rs.3,18,000/-. The appellant/Insurance company is permitted to withdraw the excess amount deposited before the Tribunal along with proportionate

interest thereon. The petitioner/claimant is permitted to withdraw the modified award amount with accrued interest less the amount already withdrawn if any, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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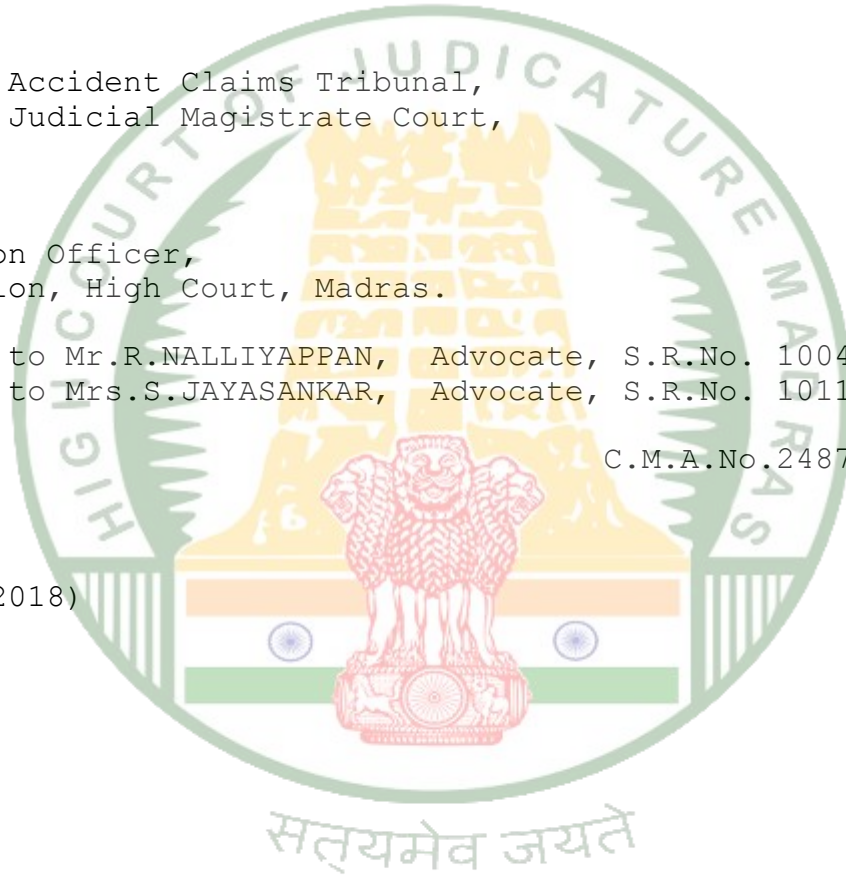
The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate Court,
Erode.

COPY TO
The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.R.NALLIYAPPAN, Advocate, S.R.No. 10047
+1cc to Mrs.S.JAYASANKAR, Advocate, S.R.No. 10112

C.M.A.No.2487 of 2013

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