

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2681 of 2013
and M.P.No.1 of 2013
and CMP.Nos.15045 and 15046 of 2017

National Insurance Company Ltd.,
1631-I-B, Bhavani Main Road
Sankari, Salem District
DO.LRN Colony, Hasthampatty, Salem-7
..Appellant/2nd respondent

Vs.

1.Karthikeyan @ Karthik ... 1st Respondent/Petitioner

2.A.N.Elangovan ...2nd Respondents/1st Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 30.01.2012 passed in M.C.O.P.No.6 of 2007 on the file of Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Salem.

For appellant : : Mr.D.Bhaskaran
for Respondents : : Mr.V.Sekar for R1

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 30.01.2012 passed in M.C.O.P.No.6 of 2007 on the file of Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Salem.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 21.09.2003 at about 1.00 a.m., while he was proceeding as a cleaner in a Lorry bearing Reg.No.KA-01-A-7857, near Nage Gowdanpalaya, Yeduyur Hobh Kunigal Taluk, Tumkur District, Karnataka District, the driver of the Lorry drove the vehicle in a rash and negligent manner, dashed against another vehicle bearing Reg.No.KA-20-9998 causing grievous injuries to him. According to the Petitioner, the accident occurred only due to the negligence of the driver

of the Lorry. At the time of the accident, the Petitioner was aged 21 years and was earning Rs.7,500/- per month by working as Cleaner. It is stated that due to the injury suffered, he is not able to attend to his work and hence sought a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the said Lorry.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company denied the accident itself and stated that only due to rash and negligent driving of the driver of another vehicle bearing Reg.No.KA-20-9998, the accident occurred. The Petitioner should have impleaded the owner and insurer of the above said Lorry for proper adjudication. The claim of the Petitioner about the injury suffered is denied. The age, avocation and income are also denied. The claim of the Petitioner is exorbitant. Thus the 2nd respondent sought for dismissal of the Claim Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and P.W.2/doctor, produced documents Ex.P.1 to Ex.P.15 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The 1st respondent remained exparte.

5. The Tribunal, on the basis of available records, found that the 1st respondent Lorry driver alone caused the accident and passed award for a sum of Rs.4,64,058/- as compensation to the injured Petitioner-Karthikeyan and directed the 2nd respondent to pay the compensation. Aggrieved over the said finding, the 2nd respondent-Insurance company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance company contends that the Tribunal failed to note that the assessment of disability suffered by the Petitioner is not properly proved. The doctor who was examined as P.W.2 has not given treatment to the Petitioner and as such, the disability assessed by him is not proper. The Tribunal failed to appreciate the evidence properly. Hence, the 2nd respondent-Insurance company sought for setting aside the award passed by the Tribunal, by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioner/injured claimant contends that the Tribunal correctly appreciated the evidence and as the accident happened due to the negligence of the 1st respondent lorry driver, the award amount passed is just and fair and no interference is required. Thus, the Petitioner sought for dismissal of the appeal.

8. Admittedly, the Petitioner was travelling as a cleaner in the 1st respondent Lorry bearing Reg.No.KA-01-A-7857. According to the Petitioner who deposed as P.W.1, near Nage Gowdanpalaya, Yeduyur Hobh Kunigal Taluk, Tumkur District, Karnataka District, the driver of the Lorry drove the vehicle in a rash and negligent manner, dashed against another vehicle bearing Reg.No.KA-20-9998, which was coming in the opposite direction. The Police registered Ex.P.1-FIR against the driver of the 1st respondent Lorry only. Thus the oral evidence of P.W.1 as well as the contents of Ex.P.1-FIR clearly shows that the negligence of the 1st respondent Lorry driver alone caused the accident. On the side of the respondents, no contra evidence was let in to disprove the claim of the Petitioner. The 2nd respondent-Insurance company has not produced any Investigation Report to contradict the claim of the Petitioner. As such, the finding of the tribunal, on the basis of P.W.1 oral evidence and Ex.P.1-FIR that negligence of the 1st respondent Lorry driver alone caused the accident is just and proper and the said finding of the tribunal needs no interference. Accordingly, the finding of the Tribunal regarding negligence aspect is confirmed.

9. The Petitioner states that he was aged 21 years at the time of accident and was employed as a Cleaner earning Rs.7,500/- per month. The Petitioner has suffered the following injuries:-

1. Sutured wound over the left fronto-parietal region
2. Abrasions over the lateral aspect of both eyes
3. Lacerated wound 4 x 2 x 1 cm over the ulnar aspect of the forearm with abnormal mobility right.
4. 6 x 1 x 1 cm lacerated wound lateral aspect of right elbow joint
5. 5 x 3 x 2cm lacerated wound medial side of the right thigh
6. 3 x 2 x 0.5 cm lacerated wound just side to the wound no.5
7. 5 x 2.5 x 1.5 cm lacerated wound antero medial aspect of the right thigh.
8. Abrasion over the right knee joint.
9. Punctured wound with muscle prolapse with swelling and deformity right leg
10. swelling of right foot.
11. 4 x 1 x 1 cm lacerated wound just dirlal to the medial malloohs (Rt)
12. 5 x 1 x 1 cm lacerated wound just proximal to left knee joint
13. 2 x 1 x 0.5 cm lacerated wound just proximal to left knee joint
14. 10 cm x 5 cm x 2 cm lacerated wound antero lateral aspect of the middle third (lt) leg.

15.4 x 1 x 0.5 cm lacerated wound just adjacent to wound 14.

16. Abrasion over the lower half of the left leg.

17. 15 x 7 cm x bone deep crush injury of his left foot with fractured bones and torn tendons seen through the wound injuries 3, 4, 9 and 17 are all grievous in nature and injuries 1, 2, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16 are all simple in nature. "

According to doctor, who deposed as P.W.2, after going through Ex.P.13 to Ex.P.15 -X ray and CT scan report, he fixed the disability suffered by the Petitioner at 45%. The doctor further deposed that petitioner finds difficulty to walk, sit with his legs folded and to climb staircase. It is clear from the evidence that the Petitioner underwent surgery and plate was implanted. As such, it is apparent that the petitioner suffered grievous injury and fracture, causing him functional disability. The Petitioner who is stated to be working as a cleaner will find it difficult to attend to his normal work and therefore, the Tribunal is justified in accepting the evidence of P.W.2 and fixing the disability suffered by the Petitioner at 45%. However, the compensation fixed at the rate of Rs.1000/- per percentage of disability is not proper. Taking into consideration the nature of injury, it will be appropriate to award Rs.2000/- per percentage of disability. Accordingly, the computation for disability is as follows:-
45% disability x 2000 = Rs.90,000/-.

10. The Tribunal has awarded Rs.2,00,000/- towards Pain and Suffering. According to the learned counsel for the 2nd respondent-Insurance company, it is highly exorbitant and against the Ruling laid down by the Apex Court as well as this Court. The said contention of the 2nd respondent appears to be justifiable and accordingly, this court is inclined to modify the same to Rs.50,000/- as compensation under "Pain and suffering". Further, the award of Rs.25,000/- towards Future medical treatment appears to be on the higher side and therefore, the same is reduced to Rs.15,000/-. However, considering the nature of avocation and the injury sustained, it will be appropriate to award Rs.15,000/- under the head "Attender charges" and Rs.10,000/- under the head "Loss of amenities". Accordingly, the modified compensation payable to the Injured Petitioner-Karthikeyan is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Transport to Hospital	Rs. 10,000/-	Rs. 10,000/-
2.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
3.	Compensation for pain and suffering	Rs. 2,00,000/-	Rs. 50,000/-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
4.	Compensation for 45% disability	Rs. 45,000/-	Rs. 90,000/-
5.	Loss of earnings during the period of treatment	Rs. 15,000/-	Rs. 15,000/-
6.	Medical expenses	Rs.1,59,058/-	Rs.1,59,058/-
7.	Future treatment	Rs. 25,000/-	Rs. 15,000/-
8.	Attender charges	---	Rs. 15,000/-
9.	Loss of amenities	---	Rs. 10,000/-
	Total	Rs. 4,64,058.00	Rs. 3,74,058/-

11. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced to Rs.3,74,058/- from Rs.4,64,058/-. The Petitioner in MCOP.No.6 of 2007 is entitled to award amount of Rs.3,74,058/- [Rupees Three Lakhs Seventy Four thousand fifty eight only] with 7.5% interest per annum from the date of petition till the date of realisation.

(iii) The appellant/2nd respondent/Insurance company is directed to deposit the award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the 1st respondent in this CMA/Petitioner-V.Karthikeyan is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

nvsri

Sub Assistant Registrar

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To

1 The II Additional Subordinate Judge,
The Motor Accident Claims Tribunal,
Salem.

Copy to

The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.D.BHASKARAN, Advocate, S.R.No.23085

+1cc to Mr.V.SEKAR, Advocate, S.R.No.23117

C.M.A.No.2681 of 2013

MP (CO)
TR(10/07/2018)



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