IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.815 of 2010

Vetrivelcholan
(name Amended vide order dated 05/08/13
in MP.1/13 in CMA.NO.815/2010) ... Appellant/Claimant

..vs..

1.P.K.Mohammed
2.United India Insurance Company Ltd.,
No.130, M.T.H.Road,
Lucky Towers,
Ambattur Industrial Estate,
Chennai- 600 058. ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 14.10.2009 made in MCOP.No.163 of 2007 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.II, Poonamallee.

For Appellant : M/s.S.Geetha
Respondents : Mr.V.Suryanarayanan for R1
Mr.R.Ravichandran for R-2

JUDGMENT

Aggrieved over the quantum of compensation awarded by the Tribunal dated 14.10.2009 made in MCOP.No.163 of 2007 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.II, 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 23.10.2006 at about 12.00 hours, while the petitioner was riding his Motor Cycle

bearing Registration No.TN-22-T-6566 on the left side of the First Main Road, Opposite to AGS Company, Ambattur Industrial Estate, Chennai, the first respondent crane driven by its driver in a rash and negligent manner dashed against the two wheeler which the petitioner was riding causing him multiple grievous injuries all over the body, while the right thigh, leg and hip was crushed. At the time of the accident, the petitioner was aged about 30 years and by working as a Police Constable in Tamil Nadu Special Police was earning a sum of Rs.7,000/- per month. Due to the injuries suffered by him, his future prospects including his promotion is affected and his carrier opportunities spoiled. Hence, the petitioner sought for a sum of Rs.25,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contended that the accident does not occur in the manner alleged by the petitioner. There is no mistake or negligence on the part of the driver of the first respondent crane bearing Registration No.TN-22-T-6566, it was only due to the careless of the petitioner himself who suddenly came to the right side of the road, the accident occurred. Even otherwise the petitioner is guilty of contributory negligence and he is not entitled to seek compensation from the respondents. The claim of the petitioner about his age, avocation and income is denied. The claim of the petitioner about the injuries suffered by him is not correct. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4 and produced documents Ex.P1 to Ex.P25 to prove his claim. On the side of the respondents, while the first respondent remained exparte, the second respondent examined R.W.1 and documents Ex.R1 to Ex.R5 were marked.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.12,07,800/- as compensation to the petitioner. Aggrieved over 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/claimant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellant/petitioner contends that the Tribunal failed to appreciate the evidence on record properly and awarded lesser compensation. The Tribunal failed to consider the evidence of P.W.2 Doctor who assessed the disability suffered by the petitioner at 90%. The amount awarded by the Tribunal under the different heads is very meager. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

9. On the other hand, disputing the claim of the petitioner, the learned counsel appearing for the second respondent-Insurance Company contends that the petitioner himself contributed to the accident and as such he is not entitled for more compensation. The Award passed by the Tribunal itself is on the higher side. Thus, the second respondent Insurance Company sought for dismissal of this appeal.

10. The petitioner, who deposed as P.W.1 clearly stated about the accident which took place on 03.10.2006 at about 12.00 hours. The police have registered Ex.P1 First Information Report against the driver of the first respondent crane only. It is further stated that the petitioner possessed valid driving licence and police after investigation laid the charges sheet against the first respondent crane driver only. On the side of the second respondent, R.W.1 stated that Ex.R1 charge sheet was laid against the first respondent vehicle driver. It is further stated that the first respondent crane driver admitted the offence and to prove the same copy of the Criminal Court Judgment is produced as Ex.R5. In the absence of any contrary evidence, the Tribunal has rightly fixed the negligence on the part of the first respondent vehicle driver alone caused the accident.

11. The petitioner states that while he was going in his two wheeler on 03.10.2006, the first respondent's crane came in a rash and negligent manner and dashed against him causing him injuries. It is clear from Ex.P3 to Ex.P6 Discharge Summaries that the petitioner under went treatment as inpatient and suffered multiple grievous injuries. The Tribunal on the basis of available materials on record found the first respondent crane driver did not posses valid driving licence and as such the second respondent is not liable to pay any compensation and exonerated the insurance company, while holding that the first respondent alone is liable to pay the compensation. Aggrieved over the same, the petitioner/claimant come forward with this present appeal.

12. In the case on hand, it is evident from Ex.P25 that the first respondent's crane driver possessed only LMV - NT, LMV -TRANCE upto 15.09.1992. The staff of the RTO office, Chennai

deposed as P.W.4 and it is clear that the first respondent driver possessed only LMV Badge. It is evident from Ex.P25 driving licence as well as Ex.R1 to Ex.R3 that the first respondent crane driver was not having regular valid driving licence except the LMV Badge on the date of the accident. As such, it is clear that on the date of accident, the first respondent permitted a person without valid licence to drive the vehicle which clearly amounts to violation of policy condition. However, considering the fact that the driver of the first respondent was having LMV Badge and he was permitted to drive the vehicle will only amount to violation of policy condition and as such the second respondent Insurance Company cannot escape from is liability to pay the compensation, but they are entitled to recover the same from the first respondent after fulfilling the award. As such, the second respondent is entitled to recover the amount from the first respondent.

13. The learned counsel appearing for the appellant/claimant contended that even though the petitioner is still employed in Tamil Nadu Police service, his promotional carrier opportunity completely ruined as he is found not eligible due to the physical disability. The Doctor who deposed as P.W.2 has given Ex.P20 disability certificate wherein, the disability is fixed at 90%. Nothing is stated by P.W.2 as to whether he gave treatment to the petitioner and no calculation sheet is attached. Considering the fact that the petitioner suffered amputation and the nature of injuries suffered by him, the whole body disability can be fixed at 75%. As such, the disability compensation fixed at the rate of Rs.3,000/- per percentage. As such, the permanent disability could be calculated as follows:- 75% x Rs.3,000/- = Rs.2,25,000/-. Admittedly, there is no loss of income as the petitioner continuous to be in service, In such circumstances, the sum of Rs.1,50,000/- awarded by the Tribunal towards Loss of Future earning is hereby set aside. Considering the nature of injuries suffered by the petitioner, his carrier opportunities has been affected and as such it would be appropriate to provide Rs.1,50,000/- towards loss of amenities instead of Rs.90,000/- awarded by the Tribunal. Considering the period of treatment undergone by him and the injuries suffered, it would be appropriate to provide Rs.50,000/- towards pain and sufferings instead of Rs.25,000/- awarded by the Tribunal. In other aspects, the award passed by the Tribunal under different heads remain unaltered and the same is confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of future earnings	1,50,000.50	-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
2.	Permanent Disability	-	2,25,000.00
3.	Transportation	25,000.00	25,000.00
4.	Medical Expenses	8,92,800.00	8,92,800.00
5.	Extra nourishment	25,000.00	25,000.00
6.	Pain and sufferings	25,000.00	50,000.00
7.	Loss of amenities	90,000.00	1,50,000.00
	Total	12,07,800.00	13,67,800.00

Accordingly, the compensation Awarded by the Tribunal is modified and the same is enhanced to Rs.13,67,800/-.

14. In the result, this appeal is allowed. No costs. The amount of Rs.12,07,800/- awarded by the Tribunal dated 14.10.2009 made in MCOP.No.163 of 2007 on the file of the Motor Accident Claims Tribunal/Fast Track Court No.II, Poonamallee, is enhanced to Rs.13,67,800/-. The Second respondent-Insurance Company is directed to deposit the entire Award amount of Rs.13,67,800/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, 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 second respondent-Insurance Company is entitled to recover the same from the first respondent 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(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

The Additional District Judge,
Fast Track Court No.II,
Poonamallee.

Copy to:

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

+1cc to Mr.R.Ravichandran, Advocate sr.no.36890

C.M.A.No.815 of 2010

nr 07/08/2018