

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3610 of 2013

Nijamudeen

..Appellant/Petitioner

Vs

1.R.K.Sons

No.232/H, Forth Cross Brindavan Road
Fairlands, Salem-16.

2.United India Insurance Company Limited

Branch III
Cherry Road, Salem.

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 10.08.2012 made in M.C.O.P.No.527 of 2009 on the file of Motor Accident Claims Tribunal, Villupuram (II Additional Sub Court, Villupuram].

For appellant : : Mr.C.Munusamy

For Respondents : : R1-set exparte before the Tribunal
Mr.Krishnamoorthy for R2.

J U D G M E N T

The Appellant is the Petitioner and fled the above appeal challenging the order and decree dated 10.08.2012 made in M.C.O.P.No.527 of 2009 on the file of Motor Accident Claims Tribunal, Villupuram (II Additional Sub Court, Villupuram].

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 12.12.2008, while the petitioner was travelling as a pillion rider in the two wheeler bearing Reg.No.TN-32-C-7639 from Vikravandi Bazar, while going near BDO Office, the 1st respondent vehicle bearing Reg.No.TN-27-B-0738 came from the opposite direction at high speed, dashed on the two wheeler in which the Petitioner was proceeding causing him multiple grievous injuries all over the body. The Petitioner suffered fracture in his right leg and suffered dislocation in his right hip. After taking treatment at G.H., Villupuram, he took

treatment as inpatient for 19 days at Bharani Hospital, Villupuram. He also underwent surgery to rectify the fracture suffered by him. According to him, the accident occurred only due to the negligence of the 1st respondent lorry driver. The Petitioner was aged 35 years, employed as Accountant and earning Rs.5000/- per month. Due to the injury suffered, he is unable to attend to his normal avocation resulting in his loss of income and claimed a sum of Rs.9,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the driver of the Lorry bearing Reg.No.TN-27-B-0738 did not possess valid driving licence and there was no valid permit and insurance coverage for the said vehicle. The accident does not occur in the manner alleged by the Petitioner. The accident occurred only due to negligence of the rider of the two wheeler who suddenly crossed the road without noticing the oncoming lorry, as a result, dashed against the 1st respondent Lorry, thereby invited the accident. As the two wheeler dashed against the Lorry, the Petitioner who was travelling as pillion rider fell down from the vehicle. The non joinder of owner and insurer of the two wheeler is fatal to the case of the Petitioner. The Petitioner is to prove the nature of injury suffered by him. The claim of the Petitioner is highly excessive. The 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.22 to prove his claim. The 2nd respondent produced neither oral nor documentary evidence. The Tribunal after analysing the evidence on record found negligence of both vehicles caused the accident, passed an award for a sum of Rs.4,79,985/- and provided for 50% of the same viz., Rs.2,40,000/- payable to the Petitioner. Aggrieved over the said finding of the Tribunal, the Petitioner/claimant has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the Appellant/Petitioner contends that the Tribunal ought to have held that the Lorry driver alone is responsible for the accident and provided for higher compensation. The amount of Rs.75,000/- given for the disability suffered is too low. The Petitioner seeks for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident occurred due to negligence of the rider of the two wheeler also and as such, the award passed by the Tribunal itself is on the higher side. There is no proof for any permanent disability suffered by the Petitioner. The Petitioner has not suffered any loss of income. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

8. According to the Petitioner/injured, while he was travelling as a pillion rider from south to north, while going near the BDO Office at Vikravandi, at 12.12.2008, the 1st respondent Lorry which was coming in the opposite direction, dashed on the two wheeler causing him multiple injuries. The Petitioner also produced copy of the FIR as Ex.P.1 and the same is laid against the driver of the 1st respondent Lorry only. The Tribunal, after analysing the evidence on record held that the Petitioner himself was driving the two wheeler even though in the Petition, it is stated that he travelled as a pillion rider and concluded that the Petitioner also contributed to the negligence at 50%. This the Petitioner/claimant contends is totally unwarranted conclusion without any basis to arrive at such conclusion by the Tribunal. The said contention of the Petitioner is to be accepted. In the present case on hand, the 2nd respondent has not let in any oral or documentary evidence. The driver of the 1st respondent Lorry has not been examined. The 2nd respondent Insurance company has not conducted any investigation and no report prepared by the Investigating Officer of the Insurance company is produced. Thus, the evidence of P.W.1 is not contradicted in any manner by the 2nd respondent. It is clear from Ex.P.1-FIR that the Petitioner was travelling as pillion rider. The Tribunal pointed out that in Ex.P.2-Accident Register copy, it is only stated that the Petitioner was travelling in the two wheeler which met with the accident. It is not stated specifically that he travelled as a pillion rider. While considering Ex.P.2-Accident Register and the grievous injury suffered by the Petitioner and damage caused to the two wheeler, the Tribunal concluded that only because the Petitioner was riding the two wheeler, he sustained grievous injuries. The said conclusion of the Tribunal is not sustainable for the simple reason that there is no evidence to show that the Petitioner was riding the two wheeler.

9. As stated earlier, in Ex.P.1-FIR it is stated that the Petitioner was proceeding as pillion rider in the two wheeler. In Ex.P.2-Accident Register copy also, it is only stated that the Petitioner was travelling in the vehicle and nothing is mentioned that he was driving the two wheeler. As stated above, the 2nd respondent did not let in any evidence. In such

circumstances, there is no material available on record to conclude that the Petitioner was actually driving the vehicle. As such, the conclusion of the Tribunal that the Petitioner was riding the two wheeler is unsustainable and the same is to be set aside.

10. In view of the above said discussion and Ex.P.1-FIR being laid against the 1st respondent Lorry driver alone, it is apparent that negligence of the said Lorry driver alone caused the accident. Thus, as owner and insurer of the vehicle, the 1st and 2nd respondents are liable to pay compensation in full.

11 The Petitioner stated that he suffered multiple grievous injuries all over his body. According to P.W.1/injured, he suffered fracture in his right leg and dislocation of right hip. He further stated that there was disc bulge in L4 and L5. He undergone treatment for 20 days as inpatient in Bharani Hospital, Villupuram. Subsequently, he has taken treatment at MIOT Hospital, Chennai. P.W.2 stated that he undergone skin grafting. Further, in order to rectify the fracture suffered, the petitioner undergone bone grafting surgery thrice. To Prove the nature of injury suffered by him, the Accident Register copy issued by Government Hospital, Villupuram, is produced as Ex.P.2. Discharge summary issued by Bharani Hospital, is produced as Ex.P.3. Likewise, the Discharge summary issued by Valli Vilas Hospital, Cuddalore, and the treatment record is produced as Ex.P.4 and Ex.P.5 respectively. It is clear from the same that the Petitioner undergone treatment in the above said Valli Vilas Hospital, as inpatient. Thereafter, the Petitioner undergone hip replacement on 24.03.2010 at MIOT Hospital and the treatment and discharge summary issued by the said hospital is produced as Ex.P.6 and Ex.P.9. Thus, the Petitioner having suffered fracture and hip dislocation has undergone continuous treatment and surgery. The Petitioner to prove the disability suffered by him examined P.W.2/doctor who clearly stated about the nature of injury suffered by the Petitioner, assessed the disability of right hip at 30% and 25% spine totalling in all 60% disability. P.W.2 doctor also stated that on physical examination, he found movement of the right hip of the Petitioner is restricted and he is walking with a limp. Further the Petitioner finds difficulty in squatting and sitting on the ground. The X-ray taken by P.W.2 is produced as Ex.P.22 series and the disability certificate issued by him is marked as Ex.P.21. The Tribunal pointed out that P.W.2 has not enclosed any calculation sheet along with Ex.P.21 and also the fact no treatment was given by P.W.2 to the Petitioner. Keeping in mind the expert evidence of P.W.2 who assessed the disability at 30% for the right hip and 20% for the spine totally 50% in all and in the absence of any contra evidence let in by the 2nd respondent and following the Ruling of this Court in 2017 (1)

TNMAC 251 [P.ELANGO VAN VS. 1)S.MURALI (2) ORIENTAL INSURANCE CO.LTD., REP. BY ITS BRANCH MANAGER, SOUTH MAIN STREET, THANJAVUR, 3)K.GANDHI], the Tribunal is justified in fixing the disability at 50% based on P.W.2 expert evidence. The same needs no interference.

12. The accident having occurred in 2008 and the nature of injury suffered, this court is of the view that there is no need to adopt multiplier method and it will be just and proper to adopt percentage method for arriving disability compensation to the petitioner. The Tribunal has correctly adopted percentage method. Instead of giving Rs.1500/- per percentage of disability, it will be appropriate to award Rs.2000/- per percentage of disability. As such, the compensation towards disability granted by the Tribunal at Rs.75,000/- is now enhanced to Rs.1,00,000/- [Rs.2000/- x 50 = Rs.1,00,000/-].

13. The Petitioner stated that he was earning Rs.5000/- by working as Accountant in a Private Rice Mill. However, there is no proof for his avocation. Hence, the Tribunal is right in fixing his monthly income at Rs.3000/-. The Petitioner undergone treatment nearly for 40 days. As such, it is clear that the Petitioner would not have attended to normal avocation at least for four months. Thus, towards loss of income during treatment period is as under:-
Rs.3000/- x 4 = Rs.12,000/-.

14. The Tribunal has provided various amount under different heads as stated below. Considering the nature of injury, period of treatment and other attendant circumstances, this court feels that there is no need to interfere with the award passed by the Tribunal under other heads except those stated above. Thus, the amounts provided by the Tribunal for transport expenses, medical expenses, Pain and suffering and Attendant charges are confirmed. Thus, the total compensation awarded by the Tribunal is modified as under:-

Sl.No.	Heads	Amounts awarded by the Tribunal (Rs.)	Amounts awarded by this Court (Rs.)
1.	Loss of income/amenities	4,500	12,000
2.	Disability	75,000	1,00,000
3.	Transport to Hospital	3,000	3,000
4.	Extra nourishment	15,000	15,000
5.	Medical expenses	3,67,485	3,67,485
6.	Attender charges	10,000	10,000
7.	Pain and suffering	25,000	25,000

Sl.No.	Heads	Amounts awarded by the Tribunal (Rs.)	Amounts awarded by this Court (Rs.)
	Total	4,99,985 but taken as 4,79,985	5,32,485

15. The Tribunal after fixing negligence at 50% on the Petitioner and 50% on the 1st respondent and as such, awarded only 50% of the compensation arrived at to the injured. The same is not proper, since the Petitioner was travelling only as a pillion rider. It is true that the owner and insurer of the two wheeler is not added as party. However, the Petitioner being a third party, he is entitled to file Petition against any one of the parties liable to pay compensation. In the case on hand, as it is concluded in the preceding paragraphs answering Point No.1 that negligence of the 1st respondent Lorry driver alone is responsible for the accident, deducting 50% of the award amount on the ground that the Petitioner himself contributed to the negligence is unsustainable and the same is set aside. The Petitioner is entitled to get the entire modified award passed by this court. Thus, the appellant/claimant is entitled for the award amount of a sum of Rs.5,32,485/-. This Point is answered accordingly.

16. In the result,

(i) This Civil Miscellaneous Appeal is allowed.

(ii) The appellant/claimant is entitled to Rs.5,32,485/- [Rupees Five lakhs thirty two thousand four hundred eighty five only] as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 2nd respondent/Insurance company is directed to pay the enhanced award amount, along with proportionate interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is entitled to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)
//True Copy//

Sub Assistant Registrar

nvsri

To

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

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 50134

C.M.A.No.3610 of 2013

CA(CO)
GSP(27/09/2018)



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