

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3766 of 2013

Arunachalam

..Appellant/Claimant

Vs.

1.Ramu
2.Divisional Manager
National Insurance Company Limited
No.19, Officers Line
Vellore

..Respondents/Respondents

Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.08.2010 passed in M.A.C.T.O.P.No.27 of 2006 on the file of Motor Accidents Claims Tribunal, Principal Sub Judge, Thiruvannamalai.

For appellants :: Mr.F.Terrychellaraja

for Respondents :: Mr.G.Udayasankar for R2.
R1:Exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 16.08.2010 passed in M.C.O.P.No.27 of 2006 on the file of Motor Accidents Claims Tribunal, Principal Sub Judge, Thiruvannamalai.

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 28.03.2005 at about 5 am., while the petitioner was proceeding as a Loadman in Thiruvannamali-Chengam Road in the 1st respondent vehicle bearing Reg.No.TN-21-R-2325, the driver of the said vehicle drove the van at high speed, in a rash and negligent manner and as he lost control, the van capsized, resulting in the petitioner suffering fracture and grievous injuries all over the body. The Petitioner states that the accident occurred only due to rash and negligent driving of the 1st respondent vehicle driver only. The petitioner was aged 65 years and by working as

cooly in the 1st respondent van, was earning Rs.4000/- per month. Due to the injury suffered, he is unable to attend to his normal work. Thus, the petitioner sought for a sum of Rs.1,00,000/- 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 accident did not occur in the manner alleged by the Petitioners. There was no communication from the 1st respondent to the 2nd respondent. The claim of the petitioner about the age, avocation and income of the deceased is denied. The petitioner was not travelling as a load man in the vehicle. The accident did not occur due to the negligence of the driver of the vehicle. The claim of the petitioner is exorbitant. Thus, the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.6 to prove his claim. On the side of the respondent, neither oral nor documentary evidence was let in. On careful analysis of the evidence available on record, the Tribunal found that negligence of the 1st respondent vehicle driver alone caused the accident, passed award for a sum of Rs.98,000/- payable by the respondents to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the Petitioner/appellant contends that the Tribunal failed to appreciate the oral evidence properly. The nature of injury suffered by the Petitioner and the period of treatment as inpatient and subsequently as out patient was not considered by the Tribunal. The Petitioner suffered fracture in left clavicle and multiple injuries all over his body. However, the Tribunal failed to consider the same properly. The disability assessed by the doctor was just and proper, but the Tribunal failed to take into consideration of the same. The amount awarded by the Tribunal under different heads is very meagre. Thus, the Petitioner/appellant sought for enhancement of the award amount by allowing the appeal.

7. On the other hand, the learned counsel for the 2nd respondent contends that the claim of the Petitioner was entertained by the Tribunal almost in full and therefore, the petitioner/appellant is not entitled for enhancement of the award amount, as claimed in the appeal. The accident occurred only due to negligence of the petitioner and as such, he is not entitled to seek compensation. The claim of the Petitioner

about his age, avocation and income are not true. The Petitioner is not suffering from any functional disability. Thus, the 2nd respondent sought for dismissal of the appeal as no ground is made out for enhancement of the quantum of the award amount.

8. The Petitioner who deposed as P.W.1 clearly stated that on 28.03.2005, at about 5 a.m., while he was travelling as a Loadman in the 1st respondent vehicle, bearing Reg.No.TN-21-R-2325, the same capsized due to high speed in which it was driven, resulting in the petitioner suffering fracture and also multiple injuries. The Police also registered Ex.P.1-FIR against the driver of the 1st respondent vehicle only. It is clear from Ex.P.2-MVI report that there was no mechanical defect in the said vehicle. Thus, P.W.1 oral evidence and contents of Ex.P.1-FIR make it clear that negligence of the 1st respondent vehicle driver alone caused the accident. However, to disprove the claim of the Petitioners, no oral evidence was let in by the respondents. Neither the driver of the 1st respondent vehicle nor any other eyewitness to the accident was examined. As such, the Tribunal has correctly fixed negligence on the 1st respondent vehicle driver as the cause for the accident, on the basis of P.w.1 oral evidence as well as contents of Ex.P.1-FIR and the same needs no interference.

9. The petitioner who deposed as P.W.1 clearly stated that he suffered the following injuries:- left femur bone fracture and knee fracture and also multiple injuries all over the body. Immediately after the accident, the petitioner underwent treatment in G.H., Thiruvannamalai. The injuries suffered by him is reflected in Ex.P.4-Wound Certificate as well as Ex.P.3-Accident Register copy. According to the petitioner, due to the injuries suffered, he is not in a position to lift his left hand over his head and as the gripping power of the left hand is reduced, he finds it difficult in lifting heavy objects with his left hand. The Petitioner further stated that he is having headache and giddiness frequently. The hearing power in the left ear is also reduced. Thus P.W.1 contends that due to the injury suffered in the accident his earning capacity is reduced. The petitioner also examined the doctor who assessed the disability suffered by him as P.W.2, who, after personally examining the petitioner and also analysing Ex.P.6-X-ray, has issued Ex.P.5-Disability certificate. According to P.W.2 as the left hand of the petitioner is affected, the disability suffered by him is fixed at 35%. Even though the learned counsel for the respondent disputed the same, there is no acceptable evidence let in on the respondent side to disprove the same. As such, the Tribunal, on the basis of P.W.2 doctor evidence fixed the disability suffered by the petitioner at 35%.

10.1. Income:- Likewise, the Tribunal, after considering the

oral evidence of P.W.1, wherein he claimed that he was working as cooly and earning Rs.4000/- per month found that as the petitioner was aged 65 years and as there was no proof for his avocation and income, notionally fixed Rs.3000/- as the monthly earning of the petitioner. The same appears to be just and proper.

10.2. Considering the claim of the petitioner that he is aged 65 years, and he has suffered fracture, he would not have attended to his work for some time, but on the other hand, there is nothing on record to show that he suffered functional disability. However, as per P.W.2 doctor's evidence, the petitioner has suffered 35% disability. As such, it will be appropriate to compensate him at the rate of Rs.3000/- per percentage of disability. Accordingly, towards compensation for the disability suffered by the petitioner Rs.3000 x 35% = Rs.1,05,000/- is granted.

10.3. Compensation for loss of income during the period of treatment:- Considering the nature of injury suffered, the petitioner could not have attended to his normal work atleast for six months. As such, for the loss of income during the treatment period, this court is inclined to grant Rs.3000 x 6 months - Rs.18,000/- as compensation.

10.4. As far as other heads are concerned, this court is of the view that the compensation awarded by the Tribunal, appears to be just and proper and hence, the same is confirmed.

11. Except for the above modification, this court finds no ground to interfere with the amount awarded under other heads. Accordingly, the modified compensation payable to the appellants/petitioners is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income during the period of treatment	Rs. 12,000/-	Rs. 18,000/-
2.	Disability	Rs. 75,000/-	Rs. 1,05,000/-
3.	Transport to hospital	Rs. 2,000/-	Rs. 2,000/-
4.	Extra nourishment	Rs. 2,000/-	Rs. 2,000/-
5.	Attender charges	Rs. 2,000/-	Rs. 2,000/-
6.	Pain and suffering	Rs. 5,000/-	Rs. 5,000/-
	Total	Rs. 98,000/-	Rs. 1,34,000/-

12. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The appellant/Petitioner is entitled to award amount of Rs.1,34,000/-, which carry 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 deposit the award amount within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Principal Sub Judge,
Motor Accident Claims Tribunal ,
Thiruvannamalai.

+1cc to MS.M.Malar, Advocate, S.R.No.29494

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.29374

C.M.A.No.3766 of 2013

TM(Co)
CS/12/06/18

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