



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.68 of 2012
and
M.P.No.1 of 2012

National Insurance Company Ltd.,
First Floor,
Karthikeya Complex,
403, Mettur Main Road,
Bhavani.

... Appellant/3rd respondent
..vs..

1. D.Shanmugam	... 1 st Defendant/Petitioner
2. A.Subramanian	... 2 nd Respondent/1 st Respondent
3. M/s.Narmatha Road Lines, Bhavani.	... 3 rd Respondent/2 nd Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.02.2011 made in MCOP.No.468 of 2009 on the file of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Erode.

For Appellant : Mr.Bhaskaran

For Respondents : Mr.R.Nalliappan for R1

JUDGMENT

PRAYER: This civil miscellaneous appeal arises out of the order and decree dated 24.02.2011 made in MCOP.No.468 of 2009 on the file of the Motor Accident Claims Tribunal (I Additional Subordinate Judge), Erode.

2. For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Tribunal.

3. The case of the petitioner is that on 23.08.2009 at about 4.15 p.m, when the petitioner was riding his two wheeler bearing Regn.No.TN-33-AJ-6328 on the extreme left side of the Moolapattarai to Pudu Sandai road, the first respondent's bus



bearing Regn.No.TN-36-H-1199 came at high speed in the same direction and dashed against the petitioner's two wheeler resulting in the petitioner suffering injuries over the right leg and all over the body. He suffered bone fracture in the right leg and underwent operation. The petitioner was aged about 25 years and carrying on furniture business, earning Rs.15,000/- per month, since the petitioner suffered fracture in the right leg, he was not able to carry any weight. The petitioner suffered permanent disability. Hence, the petitioner seeks compensation of Rs.10,00,000/- from the respondents who are the driver, owner and insurer of the bus bearing Regn.No.TN-36-H-1199 respectively. Hence the petition.

4. On the other hand, opposing the petition, the third respondent/insurance company filed detailed counter contending that the accident has occurred only due to rash and negligent driving by the rider of the two wheeler/petitioner who came at high speed and he only is responsible for the accident. The respondents are not liable to pay any compensation. The petitioner has to prove his age, avocation, and monthly income. As the negligence of the petitioner alone is the cause for the accident, the respondents seek dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and four other witnesses as P.W.2 to P.W.5 and produced Ex.A.1 to A.29 documents. On the respondent's side, neither oral evidence nor documentary evidence was produced. The Tribunal on the basis of available oral and documentary evidence found that the second respondent's bus driver/first respondent alone responsible for the accident and held that the respondents 1 to 3 are liable to pay a sum of Rs.9,37,600/- as compensation.

6. Aggrieved by the said finding of the Tribunal, the third respondent/insurance company has preferred the appeal seeking to set aside the award passed by the Tribunal.

7. Heard both sides counsel and perused the materials available on the records .

8. The learned counsel for the third respondent/appellant contended that the assessment of disability suffered by the petitioner by P.W.2 Doctor is without any basis and on the higher side. The third respondent also contends that the disability certificate was issued without necessary examinations and the same is unsustainable. The multiplier method of calculation adopted by the Tribunal, the award towards disability and under different heads is incorrect. The petitioner has suffered only physical disability and not loss of earning capacity. The assessment of Doctor in respect of part of the body or limb cannot be considered, as disability in-



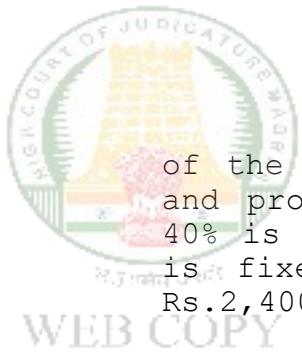
respect of whole body. The petitioner has not proved that he suffered loss of income or loss of earning due to injuries suffered by him. The claim of the petitioner is excessive and the award granted by the Tribunal is on the higher side. Thus, the third respondent/insurance company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel for the petitioner/claimant contends that the disability suffered by him is permanent and the same is preventing him from carrying his earlier avocation and as such, he is entitled for compensation in respect of loss of income as well as future prospects. As the finding of the Tribunal is just and appropriate, the petitioner seeks dismissal of the appeal.

10. The petitioner has deposed as P.W.1 and clearly stated that on 23.08.2009 at 4.15 p.m when he was proceeding from Moolapattarai to Pudu Sandai on the extreme left side of the road opposite to Saravana Industries, the second respondent's bus bearing Regn.No.TN-36-H-1199 came at high speed and tried to overtake another vehicle on the wrong side and dashed against the petitioner resulting in the accident.

11. The petitioner also produced certified copy of F.I.R as Ex.A.1 wherein the driver of the bus is shown as accused. Likewise, the petitioner also produced the Charge sheet laid against the driver of the bus after investigation by the Police as Ex.A.6. The petitioner also pointed out that the driver of the first respondent's bus was convicted, as evidenced by Ex.A.7 certified copy of Judgment in STC No.413 of 2009. There is no contra evidence on the side of the respondents to disprove the same. In such circumstances, on the basis of oral evidence of P.W.1 as well as Ex.A.1, A.6 and A.7 documents, it is clearly found that the accident occurred only due to the rash and negligent driving by the driver of the second respondent's bus. As such the respondents who are driver, owner and insurer of the bus bearing Regn.No.TN-36-H-1199 are jointly and severally liable to pay compensation to the petitioner, who suffered injuries.

12. The petitioner claims that he was aged about 26 years and carrying on furniture business under the name and style of "Veekay Industries", Kumalankuttai, Erode and earned Rs.15,000/- per month. The petitioner examined P.W.3 who produced the documents relating to Veekay Industries as Ex.A.23 to Ex.A.29 and stated that the petitioner Shanmugam is working in their company and he is getting a monthly income of Rs.12,500/- to Rs.15,000/-. The Tribunal, after considering the documents, found that the petitioner was infact working in the said Veekay Industries and accordingly fixed the monthly income



of the petitioner at Rs.6,000/- . The same appears to be just and proper. Considering the age and petitioner having injury 40% is to be added as future prospects. Thus the monthly income is fixed as Rs.6,000/- x 40/100 = 2,400/- = Rs.6,000/- + Rs.2,400/- = Rs.8,400/- .

13. The petitioner examined P.W.2 and P.W.4 doctors to prove the nature of injuries suffered by him as well as the permanent disability. Ex.A.17 Photos and negatives clearly show the injuries sustained by the petitioner. P.W.2 Dr.P.Senthil Kumar examined the petitioner and assessed the disability at 65%. According to P.W.2 doctor, the petitioner cannot stand on his right leg for more than 10 minutes and he is finding difficulty in sitting, kneeling and squatting. As per Doctor's evidence, the movement of right ankle and meta tarsal big toe of the petitioner are restricted. Further, it is evidenced from Ex.A.14 Pass book with disability certificate issued by the Government, that the disability of the petitioner was assessed at 65% by the medical board. The petitioner also produced Exs.A.18 and A-21 X-rays, and Ex.A.19 Scan report . Further, it is evident from P.W.4's deposition that he was running a Curie Poly Clinic and he retired from Government Hospital, Erode as senior surgeon. P.W.4 stated that bones in petitioner's leg have got damaged, due to which, he is not in a position to work as he used to do. It is evident from P.W.4 deposition that the broken bones of the petitioner have not joined properly resulting in permanent disability. In such circumstances, on the basis of evidence of P.W.2 and P.W.4 and Ex.P.20 disability certificate, the Tribunal correctly fixed the disability suffered by the petitioner at 60%.

14. The learned counsel for the third respondent/insurance company/appellant contended that physical disability of the petitioner should not be considered as one causing permanent disability and loss of income and as such adopting multiplier system to calculate the amount of compensation is not warranted and the Tribunal erred by doing so. The details of the compensation awarded by the Tribunal are as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of earning capacity due to permanent disability (Rs.3,600/- x 12 x 18 = Rs.7,77,600/-)	Rs.7,76,600/-
2	Pain and Suffering	Rs.50,000/-
3	Extra Nourishment	Rs.20,000/-
4	Transport Charges	Rs.5,000/-
5	Medical Expenses	Rs.60,000/-



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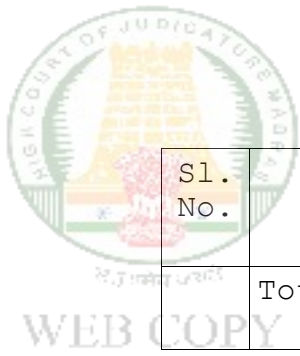
Sl. No.	Head	Amount granted by the Tribunal
6	Loss of amenities	Rs.25,000/-
	Total	Rs.9,37,600/-

It is clear that the petitioner had sustained fracture and his bones have not joined properly and he continues to suffer from the same. In such circumstances, adopting multiplier method to award compensation for loss of income is just and proper. As such, the contentions of the third respondent insurance company that the calculation made by the Tribunal on the basis of multiplier method is to be set aside cannot be accepted. In such circumstances, taking into account the monthly income of the petitioner as Rs.8,400/-, the loss of earning capacity for the permanent disability at 30% by applying the correct multiplier of 18, the calculation is as under :-

$\text{Rs.8,400/-} \times 30\% \times 12 \times 18 = \text{Rs.5,44,320/-}$

Accordingly, this court is inclined to grant Rs.5,44,320/- under the head "loss of earning capacity due to permanent disability. The petitioner produced medical bills Ex.A.10 to Ex.A.12 . It is evident that the petitioner has incurred medical expenses for a sum of Rs.1,05,918/-. The petitioner also examined P.W.4 and P.W.5 to prove the issuance of the said medical bills. In such circumstances, award of Rs.60,000/- towards medical expenses by the Tribunal is not proper. Hence, this court is inclined to award Rs.1,06,000/- for medical expenses, a sum of Rs.15,000/- towards Transport expenses , Rs.40,000/- towards loss of amenities , Rs.15,000/- towards pain and suffering and Rs.50,000/- towards extra nourishment. Thus, the total compensation of the petitioner is arrived at Rs.7,75,238/-. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of earning capacity due to permanent disability	Rs.7,77,600/-	Rs.5,44,320/-
2	Pain and Suffering	Rs.50,000/-	Rs.15,000/-
3	Extra Nourishment	Rs.20,000/-	Rs.50,000/-
4	Transport Charges	Rs.5,000/-	Rs.15,000/-
5	Medical Expenses	Rs.60,000/-	Rs.1,06,000/-
6	Loss of amenities	Rs.25,000/-	Rs.40,000/-



Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.9,37,600/-	Rs. 7,70,320/-

15. In view of the above modification, the civil miscellaneous appeal is allowed with costs. The third respondent/Insurance Company is directed to deposit the entire award amount of Rs.7,70,320/- with interest at the rate of 7.5% p.a. 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. On such deposit, the petitioner/appellant is permitted to withdraw the entire award amount with proportionate interest and costs, by filing necessary application before the Tribunal. Consequently connected miscellaneous appeal is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Motor Accident Claims Tribunal
(I Additional Subordinate Judge),
Erode.
2. The Section Officer, VR Section,
High Court, Madras. (2 COPIES)

+1cc to Mr.D.BHASKARAN, Advocate, S.R.No.7821
+1cc to Mr.R.NALLIYAPPAN, Advocate, S.R.No. 7615

C.M.A.No.68 of 2012

SSV(CO)
TR(05/04/2018)