

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.943 of 2012

M. Jumma Khan

..Appellant/Petitioner

Versus

1.A.Shaul Ahmeed

2.United India Insurance Co.Ltd.,
19, Andiapa Gramani Street,
Royapuram, Chennai - 600 013.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 05.08.2011 made in M.A.C.T.O.P.No.1403 of 2009 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.K.S.Thahir

For Respondents : Mr.D.Bhaskaran [for R2]
R1 - Exparte

J U D G M E N T

The petitioner/appellant has filed this appeal against the judgment and decree dated 05.08.2011 made in M.A.C.T.O.P.No.1403 of 2009 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 16.01.2009 at about 8.20p.m., while the petitioner was proceeding in a two wheeler bearing Registration No.TN-04-AL-391 as pillion rider, the rider of the vehicle suddenly took high speed and dashed against the centre median of the road, resulting in petitioner suffering grievous injuries. The accident occurred only due to rash and negligent driving by the rider of the two wheeler, in which the petitioner was proceeding as a pillion rider. The petitioner suffered multiple injuries all over the body and suffered comminuted fracture of Maxillary sinus, fracture lateral wall of left orbit, fracture L.Zygomatic complex, open

fracture both bones L.Forearm, Distal III Fracture radial styloid.

4. The petitioner was aged 35 years and was employed as a manager in a private concern earning Rs.7,000/- per month. The petitioner suffered permanent disability and underwent treatment and still he has not recovered completely and he is unable to attend to his work. Hence, the petitioner sought for a sum of Rs.9,00,000/- as compensation from the respondents who are the owner and insurer of the two wheeler, in which the petitioner travelled.

5. 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 petitioner and the 1st respondent vehicle is not involved in the accident. As per the contents of accident register issued by the Apollo Hospital in A.R.No.16110, the petitioner suffered injuries, while riding the two wheeler and fell down, but nothing was mentioned in the A.R. about involvement of the 1st respondent vehicle in the accident. The claim of the petitioner about his age, injuries, avocation and income is disputed. The petitioner himself, being the tortfeasor, he is not entitled to ask for compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioner examined himself as P.W.1, the medical expert as P.W.2, P.W.3 and another witness as P.W.4 to prove his claim. The petitioner also produced documents Exs.P.1 to P.24 in support of his contention. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials on record found that the negligence of the rider of the two wheeler alone caused the accident and passed an award for a sum of Rs.6,30,000/- payable by the respondents jointly and severally. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal. Thus, the petitioner seeks enhancement of the award amount by entertaining the appeal.

7. The learned counsel for the petitioner contends that the Tribunal failed to appreciate the nature of injuries properly and ought to have applied multiplier system for calculating the compensation payable to the petitioner. The petitioner is still undergoing treatment for the wrist injury suffered by him. The amount awarded under different heads is very nominal. The Tribunal wrongly assessed the disability on lower level. Hence, the petitioner seeks to enhance the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the petitioner himself being the rider of the two wheeler and cause for the accident is not entitled to seek any amount as compensation. The amount awarded by the Tribunal itself is on the higher side. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

9. The petitioner, who deposed as P.W.1 stated that the accident occurred due to negligence of the rider of the two wheeler bearing Registration No.TN-04-AC-03391. The police also registered a case against the rider of the two wheeler as per Ex.P.1 - F.I.R. After investigation, the police laid Ex.P.7 - Charge sheet against the rider of the two wheeler only. It is clear from Ex.P.8 - M.V.I report that the vehicle did not suffer from any mechanical defect. The petitioner also produced rough sketch of the occurrence spot as Ex.P.5. It is clear from the contents of the above documents as well as oral evidence of P.W.1 that only due to driving of the two wheeler by its rider at high speed, he lost his control and dashed against the road median, resulting in the accident. There is no contra evidence to the contention of the petitioner. The 2nd respondent/Insurance Company has not let in any oral nor documentary evidence to disprove the claim of the petitioner. As such, it is clear from the available evidence let in by the petitioner that the accident occurred only due to negligence of the rider of the two wheeler, in which, the petitioner was travelling as a pillion rider. Thus, the Tribunal is justified in fixing the negligence on the 1st respondent vehicle rider.

10. The petitioner claims that he was employed as a manager in a private concern earning Rs.7,000/- per month. Further, P.W.1 stated that he was aged 35 years, at the time of the accident. According to him, he suffered the above said injuries. It is clear from Ex.P.2 - Copy of the accident register that the petitioner suffered multiple fracture and grievous injuries all over his body. The petitioner underwent treatment as inpatient in the Apollo Hospital, Chennai, from 17.01.2009 to 02.02.2009 as evidenced by Ex.P.3 - Discharge Summary. The petitioner subsequently underwent operation and he was treated as an inpatient from 04.02.2009 to 13.02.2009 in the same Apollo Hospital and another surgery was done on 09.02.2009 and Ex.P.4 - Discharge summary is the proof for the same. The petitioner produced Ex.P.6 - wound certificate as well as Exs.P.12 to P.14 - X-Rays and Scan, in support of his contention. The petitioner also produced the photo taken of injuries along with CD as Exs.P.24 and P.17. It is clear from the above said documents that the petitioner has suffered severe grievous injuries and fracture.

11. The petitioner claimed that due to the injury suffered by him, he is unable to attend to his work and the injury caused him permanent disability. The Doctor, who assessed and examined the petitioner's disability deposed as P.Ws.2 and 3. The disability certificates issued by them are marked as Ex.Ps.15 and 18 respectively. The Doctor, who deposed as P.W.3, stated that the petitioner suffered 50% partial permanent disability due to injury suffered on the left fore head. On the basis of Exs.P.19 and P.20 - Scan reports as well as Ex.P.21 -EEG, the disability was assessed by the Doctor as mentioned in Ex.P.18 - Disability certificate. The other Doctor, who deposed as P.W.2 assessed, the disability due to fracture of both bones at 40% and issued Ex.P.15 - Disability certificate. P.W.2 also stated that on the basis of Ex.P.17 - Photo copy as well as Ex.P.16 - X-ray report, the disability can be fixed at 40%. On the basis of the same, it is pointed out that total disability suffered is 90%. However, the Tribunal, considering the evidence of P.Ws.2 and 3, fixed the partial permanent disability suffered by the petitioner at 50%. Aggrieved over the same, the learned counsel for the petitioner contended that without any basis the Tribunal has reduced the assessment made by the Doctor and fixed the disability as 50%, whereas, the petitioner is still unable to use his hands properly and he is still under treatment and unable to attend to even day to day work. Hence, he sought for adopting multiplier method to assess the compensation to be provided for the disability suffered by the petitioner. Since the petitioner's future life is affected, the petitioner counsel also contended that there is no ground for the Tribunal to reduce the disability percentage in the absence of any contra evidence let in by the respondents.

12. In support of the same, he relied upon the following Rulings reported in,

(i) 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others],

(ii) 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,]

It is true, that P.Ws.2 and 3 did not give treatment to the petitioner, but they have made personal assessment and also produced CT Scan as well as EEG and the connected reports taken by them to assess the disability. In such circumstances, this Court is of the view that there is no reason for the Tribunal to reduce the disability as fixed by the experts. Hence, the disability as stated by P.W.3 is fixed at 90%. However, considering the nature of injury and disability stated by Doctors P.Ws.2 and 3, this court is of the view that the petitioner will be compensated properly by adopting percentage method itself as done by the Tribunal. Hence, the compensation for disability is calculated as follows:-

$$\text{Rs. } 2,000 * 90\% = \text{Rs. } 1,80,000/-$$

13. Similarly, considering the nature of injury suffered and period of treatment undergone by the petitioner, the amount awarded under various head by the Tribunal appears to be very meager and as such they are modified as stated below:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Disability	Rs. 1,00,000.00	Rs. 1,80,000.00
2	Pain and Suffering	Rs. 20,000.00	Rs. 50,000.00
3	Medical Expenses	Rs. 4,62,000.00	Rs. 4,62,000.00
4	Transport Charges	Rs. 5,000.00	Rs. 35,000.00
5	Extra nourishment	Rs. 5,000.00	Rs. 20,000.00
6	Damages of clothes and articles	Rs. 1,000.00	Rs. 3,000.00
7	Future medical expenses	Rs. 10,000.00	Rs. 40,000.00
8	Loss of Income	Rs. 27,000.00	Rs. 60,000.00
9	Total	Rs. 6,30,000.00	Rs. 8,50,000.00

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs. 8,50,000/- from Rs. 6,30,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the petitioner/appellant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(vii) Petitioner/appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

bri

To

1.The V Judge,
Small Causes Court,
(The Motor Accident Claims Tribunal)
Chennai.

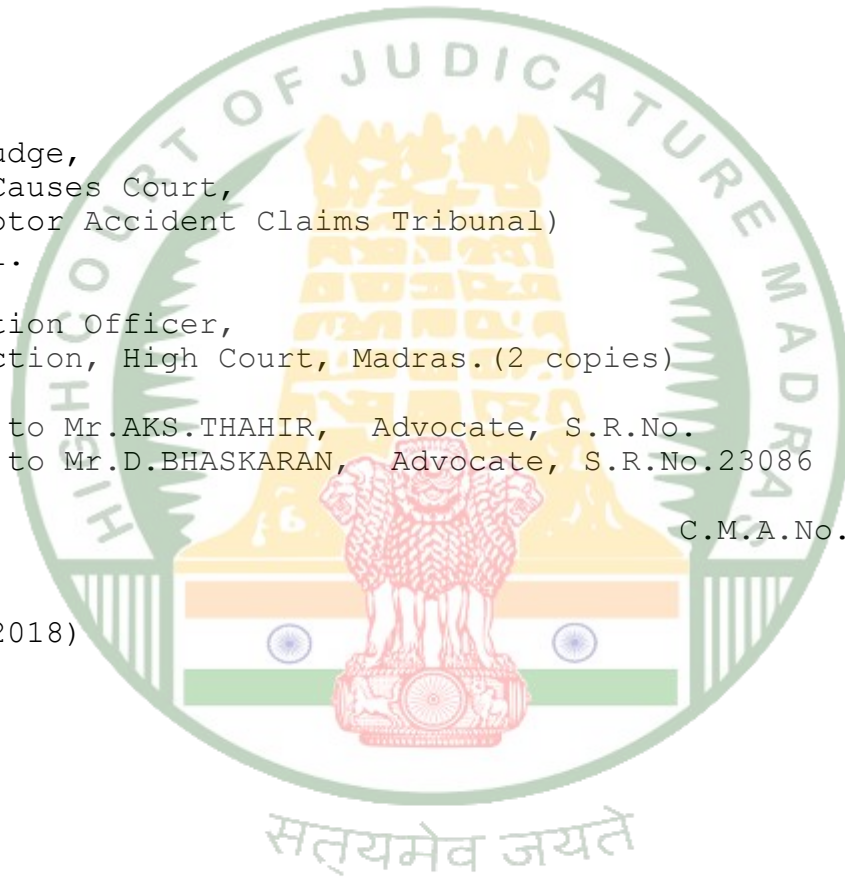
2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.AKS.THAHIR, Advocate, S.R.No.

+1cc to Mr.D.BHASKARAN, Advocate, S.R.No.23086

C.M.A.No.943 of 2012

CA (CO)
TR(09/05/2018)



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