

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2358 of 2010

S.Baskaran

... Appellant / Petitioner

versus

1.M/s.Odyssey India Limited,
No.6, 1st Main Road,
Gandhi Nagar, Adyar,
Chennai - 600 020.

2.M/s.Bajaj Allianz General Insurance Co. Ltd.,
No.25/26, College Road,
Chennai - 600 006. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 06.04.2010 passed in M.C.O.P.No.668 of 2006 on the file of the Motor Accidents Claims Tribunal [Small Causes Court No.IV], Chennai.

For Appellant : Mr.T.G.Balachandran
For Respondent No.1 : Exparte
For Respondent No.2 : Mr.T.K.Premkumar

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal [Small Causes Court No.IV], Chennai in M.C.O.P.No.668 of 2006, the appellant, who is the petitioner in the Claims Petition filed this appeal, in which, he is seeking the relief to enhance the award amount arrived at by the Claims Tribunal.

2. In the Claims Tribunal, the appellant herein had filed the Petition under Section 166 of the Motor Vehicles Act, in which, he claimed a compensation of Rs.2,50,000/-. The first respondent herein is the owner of the Motor Cycle bearing Registration No.TN-07-AE-9108, which is responsible for the accident. The second respondent herein is the insurer of the said vehicle.

3. After an elaborate enquiry, the Claims Tribunal awarded compensation of Rs.1,19,000/- with interest @ 7.5% per annum. As against which, the present Appeal has been preferred by the appellant.

4. In the Claims Tribunal, the case of the appellant/petitioner is as follows: On 11.01.2006, at about 11.30 hours, when at the time the petitioner was proceeding in Sardar Patel Road near Gandhi Nagar Bus Stop from east to west in a Motor Cycle bearing Registration No.TN-07-S-3881 and at that time, Motor Cycle bearing Registration No.TN-07-AE-9108 driven rashly and negligently on the left side and took a right turn by hitting the front wheel of the petitioner's vehicle, as a result of which, the petitioner fall on the road leading to fracture of left knee and left clavicle and multiple injuries.

5. According to the petitioner, the driver of the Motor Cycle bearing Registration No.TN-07-AE-9108 is solely and directly responsible for the accident. Since the first respondent is the owner of the vehicle and the second respondent is the insurer, both are jointly, severally and vicariously liable to pay compensation to the injured petitioner with interest and costs.

6. Per contra, opposing the claim made by the petitioner, by filing counter affidavit, the second respondent denied the accident itself and stated that, only due to the rash and negligent act of the petitioner, the accident had occurred. Further, it was contended that at the time of accident, the injured petitioner drove the Motor Cycle in a rash and negligent manner. As a result of which, the accident had occurred. According to him, the age, avocation and income of the petitioner are also denied. The claim of the petitioner is exorbitant and thus, the second respondent sought for dismissal of the Claims Petition.

7. Before the Claims Tribunal, the petitioner examined himself as P.W.1 and the Doctor, who issued Disability Certificate to the claimant was examined as P.W.2 and 15 documents were marked on the side of the petitioner as Ex.P.1 to Ex.P.15. None have been examined on the side of the respondents in order to prove their contentions. The first respondent remained ex parte in the Claims Tribunal.

8. The Claims Tribunal, on the basis of the available records, found that the driver of the Motor Cycle, who came behind the petitioner's vehicle alone caused the accident and passed an award for a sum of Rs.1,19,000/- along with interest @ 7.5% per annum as compensation to the injured [claimant /

Baskaran] and directed the second respondent to pay the compensation. Aggrieved over the said finding, the petitioner has come forward with the present Appeal praying to enhance the award amount.

9. When the appeal is taken up for hearing, I have heard the arguments of Mr.T.G.Balachandran, learned counsel appearing for the appellant, Mr.T.K.Premkumar, learned counsel appearing for the second respondent and also perused the records carefully.

10. The learned counsel appearing for the appellant [injured] would contend that the Tribunal has failed to appreciate the evidence and exhibits produced on the side of the appellant. Further, the percentage of disability stated by P.W.2 has not been analysed in a proper and prospective manner and awarded compensation. Further, he would contend that the award passed by the Claims Tribunal under various heads are very meager one. Therefore, he prayed for enhancing the compensation fixed by the Claims Tribunal.

11. Per contra, the learned counsel appearing for the second respondent would contend that the Claims Tribunal has properly appreciated the evidence given by the petitioner and on appreciating the relevant documents passed the award, which does not need any interference and thus, the second respondent sought for dismissal of the appeal.

12. On considering both sides arguments, as of now, the learned counsel appearing for the second respondent did not dispute the findings arrived at by the Claims Tribunal in respect to the manner of accident occurred. Further, he is not denied the liability fixed by the Claims Tribunal. So, only the aspect which has to be decided in this Civil Miscellaneous Appeal is whether the quantum of compensation arrived at by the Claims Tribunal found correct or not.

13. First of all, on going through the evidence given by P.W.2, due to the accident, the petitioner has sustained 40% partial permanent disability. In this regard, the Claims Tribunal after analysing the evidence given by the Doctor came to the conclusion that the assessment of disability by P.W.2 appears to be reasonable and fixed Rs.1,000/- per percentage. Since the alleged accident had occurred in the year of 2006, I am of the opinion that Rs.1,000/- per percentage is very meager and Rs.2,000/- is the appropriate amount per percentage. Accordingly, Rs.80,000/- has been fixed under the heads of Permanent Disability.

14. The Claims Tribunal while at the time of fixing the Loss of Earning fixed the monetary income of the petitioner as Rs.8,000/- and came to the conclusion that the petitioner would have been prevented from attending his job to a maximum of 4 months due to the injuries sustained by him and ultimately, awarded Rs.32,000/- under the head of Loss of Earning. In fact, the said assessment was made based on Ex.P.9, copy of the invoice issued by ABT Parcel Service Commission. Therefore, there is no need to alter the said assessment made by the Claims Tribunal. Accordingly, the award of Rs.32,000/- is unaltered under the head of Loss of Earning.

15. The Claims Tribunal has awarded Rs.5,000/- under the head of Transport to Hospital. As far as this amount is concerned, I am of the opinion that the said amount is very excessive and therefore, Rs.2,000/- is fixed as Transport to hospital. In respect to Extra Nourishment, Rs.3,000/- was awarded and the same is enhanced to Rs.6,000/-. No amount was awarded under the head of attendant charges by the Claims Tribunal. After the occurrence, since the petitioner was hospitalised for a considerable period and also for the reason that the claimant sustained a fracture, he needs some attender to help subsequently after attending necessary treatment. Hence, I am of the opinion that Rs.10,000/- is the appropriate amount under the head of Attendant Charges.

16. The award of Rs.28,500/- which was fixed by the Claims Tribunal under the head of Medical Expenses is based on relevant records and therefore, the said amount is not unaltered. The Tribunal awarded Rs.500/- under the head of Damage to Clothes, which is also unaltered. However, considering the facts and circumstances of the case, towards the head of Pain and Sufferings, the amount awarded by the Claims Tribunal Rs.10,000/- is enhanced into Rs.20,000/- and Rs.10,000/- was allowed under the head of Loss of Amenities. Accordingly, modified compensation payable to the injured [claimant / Baskaran] is as under:- सत्यमेव जयते

	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs.)	Amount (Rs.)
1	For 40% Disability	40,000.00	80,000.00
2	Loss of Income	32,000.00	32,000.00
3	Transport to Hospital	5,000.00	2,000.00
4	Extra Nourishment	3,000.00	6,000.00
5	Attendant Charges	-	10,000.00

	Heads of claim	Tribunal	High Court
6	Medical Expenses	28,500.00	28,500.00
7	Pain and Sufferings	10,000.00	24,000.00
8	Damage to Clothes	500.00	500.00
	Total	1,19,000.00	1,83,000.00

17. In the result,

[i] The Civil Miscellaneous Appeal is partly allowed.

[ii] The award amount is enhanced to Rs.1,83,000/- from Rs.1,19,000/-. The petitioner in M.C.O.P.No.668 of 2006 is entitled to award amount of Rs.1,83,000/- [Rupees One Lakh Eighty Three Thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [claimant, Baskaran] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri
To
The Motor Accidents Claims Tribunal
[Small Causes Court No.IV],
Chennai.

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

+lcc to Mr.T.K.Premkumar, Advocate Sr.106764
+lcc to Mr.T.G.Balachandran, Advocate Sr.106348

C.M.A.No.2358 of 2010

pa[col]
srg 27/11/2020