

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.10.2018

Delivered on : 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.662 of 2015

B.Ansar @ Ansar Basha ... Appellant/Petitioner

Vs

1.M/s.ESAI & Company,
No.38/40, North Boag Road,
T.Nagar, Chennai - 600 017.
(Was Set exparte in the Trial Court)

2.United Insurance Company Ltd.,
No.W.122, 3rd Avenue,
Anna Nagar, Chennai-600 040
Serviced at
United India Insurance Company Ltd.,
Motor Third Party Claims-Hub
Silingi Buildings
No.134, Greams Road,
Chennai-600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 20.10.2014 passed in M.C.O.P.No.975 of 2012 on the file of the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mrs.P.T.Salim Fathima
for M/s.M.Swamikkannu

For Respondents: Mr.G.Udaya Sankar (for R2)
No Appearance (for R1)

O R D E R

Being dissatisfied with the quantum of compensation of Rs.2,20,000/- awarded by the Tribunal for the injuries sustained

by the appellant in the accident, he had filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. Brief facts, which led to the filing of the appeal is as follows:

On 25.12.2011 at about 3.00 P.M., the appellant was riding cycle in Thomas Road 3rd street from east to west direction on the southern side of the road. While he was entering South Boag Road, a motorcycle bearing registration No.TN-09 AU 7077 driven by its driver in a rash and negligent manner dashed against the appellant and dragged him to some distance. Due to the impact, the appellant sustained multifarious fractures and other injuries all over the body. Immediately after the accident, the appellant was admitted in Government Royapettah Hospital, Chennai and thereafter, at Government General Hospital, Chennai. At the time of accident, the appellant was working as butcher in Tamil Nadu Mutton and Chicken Stall, T.Nagar, Chennai and was earning Rs.10,000/- to Rs.12,000/- per month. Regarding the accident, a criminal case in Crime No.534/TN.3/2011 was registered by Pondy Bazar Police Station against the rider of the motorcycle. Stating that the accident occurred due to rash and negligent driving of the rider of the motorcycle, the appellant has filed the claim petition claiming compensation of Rs.11,00,000/-.

3. Resisting the claim petition, the second respondent insurance company filed counter stating that the appellant being a cyclist has contributed to the accident and he could have avoided the accident if care and caution had been exercised and, thus, the appellant has violated the traffic norms. Therefore, contributory negligence may be apportioned with a greater percentage against the appellant himself. It is stated that the rider of the motorcycle had no valid driving licence at the time of accident and, hence, liability of the second respondent does not exist as per the provisions of the Motor Vehicles Act. The second respondent also denied the age, occupation, monthly income and the nature of injuries sustained by the appellant.

4. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Amarnath R Sowhee was examined as P.W.2. Exs.P1 to P4 were marked. On the side of the second respondent, one P.Murugesan, Senior Assistant was examined as R.W.1 and Exs.R1 to R3 were marked.

5. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the rider of the first respondent. Since the rider of the motorcycle had no valid driving licence at the time of accident, the Tribunal directed the second respondent insurance company to pay at the first instance and then recover

it from the first respondent. As far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs.2,20,000/-. Assailing the quantum, the appellant has filed the present Civil Miscellaneous Appeal.

6. I heard Mrs.P.T.Salim Fathima for M/s.M.Swamikkannu, learned counsel for the appellant and Mr.G.Udaya Sankar, learned counsel for the second respondent. No representation on behalf of the 1st respondent.

7. Assailing the quantum, the learned counsel for the appellant submitted that the Tribunal erred in awarding Rs.24,000/- towards loss of income for three months even though it is the categorical evidence that the appellant worked as butcher and was earning Rs.10,000/- to Rs.12,000/- per month. He would submit that amounts awarded under the heads attender charges, continuing permanent disability, mental agony and pain suffering are very low. The Tribunal also erred in not considering and awarding any amount towards loss of earning power which has to be separately awarded. The learned counsel further submitted that in totality the Tribunal erred in awarding only a sum of Rs.2,20,000/- as against the claim of Rs.11,00,000/- and prayed for enhancement of compensation to Rs.11,00,000/-.

8. Per contra, the learned counsel for the second respondent submitted that taking note of injuries sustained by the appellant and also the period of treatment undergone by him, the Tribunal awarded Rs.2,20,000/- as compensation. Since Rs.2,20,000/- awarded by the Tribunal is reasonable, the same warrants no interference and prayed for dismissal of the appeal.

9. I have considered the submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and also perused the materials available on record.

10. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reason that these things are recorded by the Tribunal and it was held that the second respondent insurance company is liable to pay compensation to the appellant/claimant at the first instance and then recover the same from the first respondent as the rider of the motorcycle had no valid driving licence at the time of accident. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent has to pay the compensation first and then recover it from the first respondent warrants no interference.

11. As far as quantum of compensation is concerned, the appellant had claimed compensation of Rs.11,00,000/- for the injuries sustained by him in the road accident. In the claim petition, the appellant stated that he had sustained multiple compound and comminuted fracture in left leg near ankle and right hand shoulder bone and also dislocation of bone. Apart from the above, it has been stated that the appellant sustained multiple internal and external injuries all over the body. The appellant also stated that he had taken treatment at Government Royapettah Hospital, Chennai on 25.12.2011, from where, he was shifted to Government General Hospital, Chennai, where he had taken treatment from 25.12.2011 to 26.12.2011. The appellant produced Ex.P2-discharge summary issued by Rajiv Gandhi Government General Hospital, Chennai. On a perusal of Ex.P2, this Court finds that the appellant had taken treatment as inpatient for two days for the fracture of left tibia and fracture of right scapula.

12. The learned counsel for the appellant submitted that due to fracture sustained by the appellant, his earning power has been affected and the Tribunal erred in not awarding any amount towards loss of earning power, which has to be separately awarded by the Tribunal. Accordingly, the learned counsel prayed for awarding of compensation towards loss of earning power. He would further submit that continuing permanent disability and loss of earning power are distinct and different heads and, therefore, the Tribunal ought to have awarded compensation under the head loss of earning power as well as disability. To fortify the said submission, the learned counsel relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.8639 of 2013, decided on 24.9.2013 [Alexander Anand Kumar v. Divisional Engineer (H)].

13. In Alexander Anand Kumar v. Divisional Engineer (H), supra, the Hon'ble Supreme Court held as under:

"2. Learned counsel appearing for the appellant/claimant brings to our notice a judgment of this Court in the case of K.Suresh vs. New India Assurance Company Limited & another, reported in (2012) 12 SCC 274. In the said decision, this Court has categorically held that the compensation can be payable both for loss of earning capacity as well as disability suffered by the claimant."

14. In the case on hand, admittedly, the appellant has not filed any proof to show that his earning capacity was affected due to injuries sustained in the accident. On a perusal of Ex.P2-discharge summary, it is seen that the appellant suffered fracture of left tibia and fracture of right scapula for which he had taken treatment only for two days as inpatient. Apart

from Ex.P2-discharge summary, the appellant had not produced any medical records to show that he had taken continuous treatment for the injuries sustained by him in the accident.

15. P.W.2-Doctor who examined the appellant after the accident, assessed the disability at 35% and issued Ex.P4-disability certificate. In his evidence, P.W.2 deposed that fracture of left tibia malunited in widening, BT stiffness left ankle, shortening of right leg 3 c.m. with raptures, malunion of right scapula with stiffness right shoulder with rotation 15 degrees. However, P.W.2 admits in his cross-examination that he had not treated the appellant. Thus, it is clear that only on clinical examination, P.W.2 assessed the disability.

16. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But, at the same time, it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit, but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness.

17. In case of injury or permanent disablement multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power. It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent.

18. In the present case, as stated supra, the appellant had sustained fracture of left tibia and fracture of right scapula. The fact remains that for the aforesaid injury, he had taken treatment only for two days. No proof has been filed to show that his earning capacity was affected. No medical record has been produced to show that surgery was performed during treatment. This Court is of the view that the appellant is not entitled to seek compensation under the head loss of earning power. Therefore, the Tribunal was right in declining to award compensation towards loss of earning power.

19. As far as the disability sustained by the appellant is concerned, as stated supra, P.W.2-Doctor assessed the disability at 35%. Taking the disability at 35%, the Tribunal awarded Rs.70,000/- towards disability by adopting Rs.2,000/- per percentage of disability.

20. By relying upon the decision of this Court in National Insurance Company Ltd., rep. by its Branch Manager, having its Branch Office at 78, Thikuvengkatasamy Chetty St., Erode v. G.Ramesh and another, reported in 2013 (2) TN MAC 583, the learned counsel for the appellant submitted that the Tribunal erred in taking Rs.2,000/- per percentage and it ought to have taken Rs.3,000/- per percentage of disability.

21. Following the decision of this Court in National Insurance Company Ltd., rep. by its Branch Manager, having its Branch Office at 78, Thikuvengkatasamy Chetty St., Erode v. G.Ramesh and another, supra, this Court is inclined to take Rs.3,000/- per percentage and accordingly, Rs.1,05,000/- is awarded towards 35% disability in the place of Rs.70,000/- awarded by the Tribunal.

22. The Tribunal awarded Rs.24,000/- towards loss of income for three months by taking the monthly income of the injured at Rs.8,000/- per month. While awarding the said amount, the Tribunal held that due to injuries the appellant would have been prevented from attending his work to a maximum period of three months.

23. According to the appellant, he was working as butcher in Tamil Nadu Mutton and Chicken Stall, T. Nagar, Chennai and was earning Rs.10,000/- to Rs.12,000/- at the time of accident. To prove his avocation and monthly earning, admittedly, the appellant has not produced any proof. In the absence of proof, the Tribunal has fixed the notional income of the appellant at Rs.8,000/-, which in my considered view is reasonable. Considering the nature of injuries sustained by the appellant and also the period of treatment undergone by the appellant only

for two days, this Court does not want to interfere with the amount of Rs.24,000/- awarded by the Tribunal towards loss of income for three months.

24. The Tribunal awarded Rs.10,000/- for transport to hospital; Rs.15,000/- for extra-nourishment; Rs.25,000/- towards loss of amenities in life and Rs.1,000/- for damages to cloths and articles. Since the amount awarded under the aforesaid heads are reasonable, the same are maintained.

25. As far as Rs.10,000/- awarded by the Tribunal towards medical expenses is concerned, the appellant has not produced any medical bills. As per his own pleadings, the appellant had taken treatment only in Government Hospitals that too only for two days. However, taking note of injuries sustained by the appellant, Rs.10,000/- awarded by the Tribunal for medical expenses is confirmed. The Tribunal awarded Rs.15,000/- towards attender charges. Since the said amount awarded by the Tribunal is reasonable, the same is maintained.

26. The Tribunal awarded Rs.15,000/- towards mental agony. Due to injuries sustained in the accident, the appellant would have suffered some mental strain. Considering the nature of injuries and the age of the appellant, this Court finds that Rs.15,000/- awarded by the Tribunal is very low and the same is enhanced to Rs.50,000/-.

27. The Tribunal awarded Rs.35,000/- towards pain and suffering. Considering the nature of injuries sustained by the appellant in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pains and sufferings are hardships, which are intolerable and cannot be expressed in terms of words and money cannot compensate the same. Therefore, taking note of the age of the appellant at the time of accident, this Court is of the view that Rs.35,000/- awarded by the Tribunal towards pain and suffering is very low and the same is enhanced to Rs.1,00,000/-.

28. In the case on hand, the Tribunal has not awarded any amount towards future medical expenses. Considering the nature of injuries sustained by the petitioner, it would be appropriate to award a sum of Rs.25,000/- towards future medical expenses.

29. In view of the above discussion, Rs.2,20,000/- awarded by the Tribunal for the injuries sustained by the appellant in the road accident is enhanced to Rs.3,80,000/- as under:

Heads	Rs.
Disability	1,05,000.00

Heads	Rs.
Loss of income for 3 months	24,000.00
Transport charges	10,000.00
Extra-nourishment	15,000.00
Loss of amenities	25,000.00
Damages to cloths	1,000.00
Medical expenses	10,000.00
Future medical expenses	25,000.00
Attender charges	15,000.00
Mental agony	50,000.00
Pain and suffering	1,00,000.00
Total	3,80,000.00

30. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.2,20,000/- awarded by the Tribunal in M.C.O.P.No.975 of 2012 dated 20.10.2014 is enhanced to Rs.3,80,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The compensation of Rs.3,80,000/- along with interest at the rate of 7.5% per annum is directed to be deposited by the second respondent before the Tribunal within a period eight weeks from the date of receipt of a copy of this order at the first instance and then recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the amount along with accrued interest. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

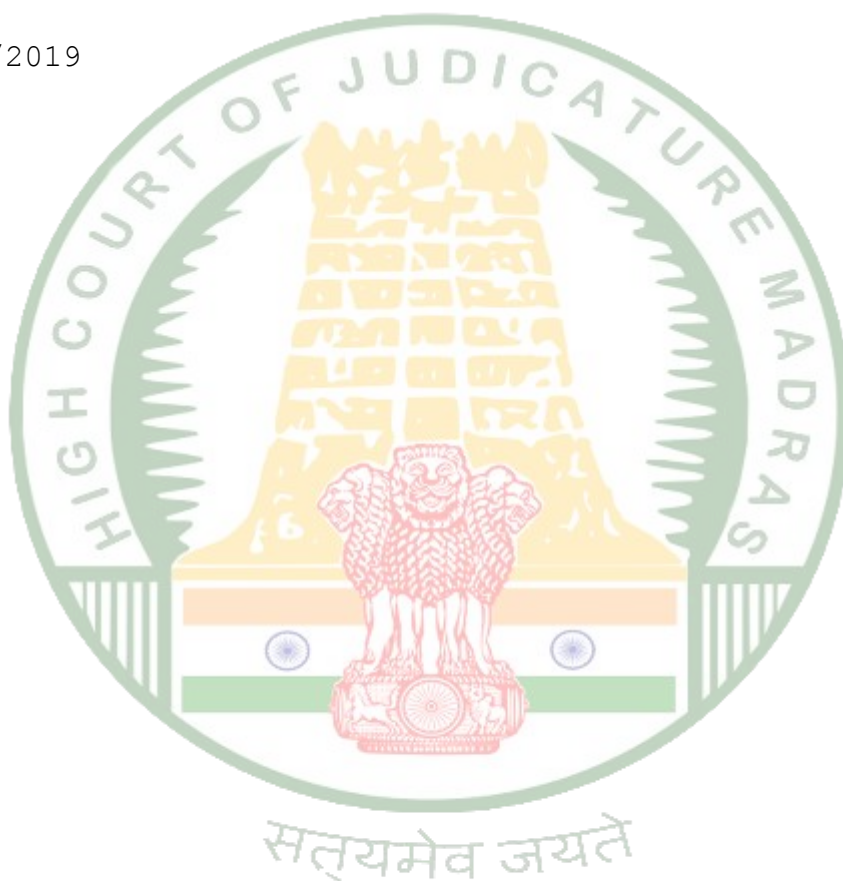
To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.662 of 2015

BS (CO)
srg 24/09/2019



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