

In the High Court of Judicature at Madras

Dated : 25.11.2019

Coram :

The Honourable Mr.Justice R.MAHADEVAN

Civil Miscellaneous Appeal No.3112 of 2019

T.Srinivasan

... Appellant/Petitioner

Vs

1.Kavitha Senthil

2.Bharti AXA General Insurance Co.

Ltd., II Floor, Metro Plaza, No.162,

Anna Salai, Chennai-2. ... Respondents/Respondents

(Since the 1st respondent set remained Exparte before the Tribunal. Hence notice may be and hereby dispensed with for R1 in this Appeal)

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the award dated 03.9.2018 made in MCOP.No.4218 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.N.Vijayaraghavan for
Mr.M.Lokesh

For Respondent-2 : Mr.K.Poomalai

JUDGMENT

The claimant is before this Court, not satisfied with the award passed by the Motor Accidents Claims Tribunal (II Judge, Small Causes Court), Chennai (hereinafter called the Tribunal) in a motor accident causing grievous injuries to the claimant - appellant, aged 38 years.

2. The case of the appellant / claimant is as follows:-

The accident took place on 11.5.2013 at 3 AM. On the date of accident, the appellant - claimant was travelling in a Scorpio car bearing Regn.No. TN-06-F-3000 in Chennai Madurai National Highway from South to North direction. When it was proceeding near MRF Tyre Company in Narayana

Mangalam, Padalur, it was driven in a rash and negligent manner and due to the same, it dashed against the left side of parapet wall and had fallen into the river, on account of which, the appellant herein and other occupants sustained multifarious fractures and injuries and some of them succumbed to the injuries. The driver cum owner of the car alone was responsible for the accident. At the time of accident, the appellant - claimant was an auto rickshaw driver-cum-owner, earning a sum of Rs.15,000/- per month. Immediately after the accident, he was taken to the Government General Hospital, Perambalur and thereafter, he was shifted to the Government General Hospital, Chennai and subsequently, he was taking treatment in a private clinic. He could not continue his avocation as before. Since the driver of the car also died in the accident, his wife, as the legal heir of the owner of the car, was added as a party respondent in the claim petition. The second respondent was the Insurer of the car and both were jointly, severally and vicariously liable to pay compensation to the appellant. Therefore, the appellant - claimant filed the petition before the Tribunal seeking a compensation of Rs.24,00,000/- together with interest and costs from the respondents herein.

3. The second respondent resisted the claim petition by filing a counter, in which, they denied the manner of accident, apart from contending that the first respondent violated the policy conditions by carrying 8 persons against permitted 7 persons; that the liability should be fixed on the first respondent; that the appellant - claimant should prove the age, occupation of the injured and deceased persons; that the claim was excessive and high; that they had to prove the validity of driving licence, the insurance policy, fitness as applicable and as to whether it was in force at the time of accident; that the interest claim should be restricted to 5.5% per annum; and that the appellant - claimant should prove that the accident took place due to the rash and negligent driving by the driver of the car and the first respondent is the legal heir of the deceased owner of the car and that there was a doubt whether the overloading caused the accident. Ultimately, the second respondent sought to dismiss the claim petition.

4. The Tribunal framed five points for consideration namely,

(i) Whether the accident was due to the rash and negligent driving by the driver of the car ?

(ii) Whether the appellant - claimant was entitled to compensation from the respondents?

(iii) What was the quantum of compensation the appellant - claimant would be entitled to under various heads claimed by him ?

(iv) Whether the appellant - claimant would be entitled to interest and from which date ? and

(v) to what other relief, the appellant - claimant would be entitled to ?

5. Along with the instant claim petition which was challenged in this Appeal, three other claim petitions were clubbed as they were filed by the other injured persons/legal heirs of the deceased persons involved in the same accident. Before the Tribunal, the appellant - claimant examined himself as PW1 apart from examining one Mr.Lakshmanan as PW2, one Dr.Amarnath R.Sowlee as PW3, Dr.Mathiazhagan as PW4, one Mr.Francis Sevier as PW5 and one Mrs.L.Kasthuri as PW6 and marked 26 documents altogether. On the side of the second respondent, one Mr.Jevarathinam and one Mr.Balamurugan were examined as RW1 and RW2 apart from marking six documents altogether. Ultimately, in the case of the appellant - claimant, the Tribunal awarded a sum of Rs.50,000/- together with interest at the rate of 7.5% per annum from the date of petition. Contending that the compensation awarded by the Tribunal is very low, the appellant - claimant has come up before this Court by way of this Appeal.

6. The learned counsel for the appellant - claimant has contended that the Tribunal has erred in awarding a meagre and inadequate compensation to the appellant - claimant after holding that the accident was due to the rash and negligent driving of the driver of the car; that the Tribunal has erred in disbelieving the evidence of PW2 without any basis; that the Tribunal failed to appreciate that the appellant - claimant suffered loss of future earning capacity; and that the compensation awarded under various heads is on the lower side.

7. The learned counsel for the second respondent - insurer has reiterated the contentions raised in the counter filed by them before the Tribunal and sought to sustain the award.

8. This Court has heard the learned counsel on either side. This Court has also carefully considered the contentions raised on either side and perused the records.

9. With regard to negligence, the Tribunal, after considering the evidence of PW1 and Ex.P1 - the First Information Report, found that the respondents did not

adduce any evidence nor produced any material to disprove that the accident was caused due to rash and negligent driving by the driver of the car. On perusal of the documents, this Court also finds that there is no piece of evidence to dislodge the said finding. In the absence of any contra evidence to dislodge the said finding, this Court does not find any irregularity or impropriety in the award passed by the Tribunal with regard to negligence aspect. That apart, the driver of the car, who was the best evidence to speak about the accident, succumbed to the injuries, which is also fatal to the case of the second respondent.

10. It is not in dispute that the Car bearing Regn.No.TN-06-F-3000 was involved in the accident because of the rash and negligent driving by its driver. The first respondent herein is the legal heir of the owner of the car and the second respondent herein is the insurer. Though the second respondent took a stand that the number of passengers involved is more than the permitted limit, the Tribunal has found that though the respondents chose to examine the Superintendent and the Senior Executive from the office of the Regional Transport Officer as RW1 and RW2, the insurance policy did not specify the number of passengers and that, apart from the driver, seven passengers can travel in the car and hence the Tribunal held that the second respondent is liable to pay compensation. This Court is entirely in agreement with the Tribunal and as such, the negligence aspect is confirmed.

11. With regard to quantum, the Tribunal after examining the evidence of PW1 and Ex.P3 - the Discharge Summary and Ex.P15 - the Disability Certificate, awarded a sum of Rs.50,000/- in total as compensation. It is seen that though the Doctor has assessed the disability percentage at 30%, it is quite surprising that the Tribunal did not take into consideration the aspect of disability. Admittedly, the appellant - claimant could not continue his avocation as he was doing before the accident. Considering these aspects, this Court sustains the disability at 30% assessed by the Doctor and it would be appropriate to award a sum of Rs.3,000/- per percentage of disability. If that is done, the compensation towards disability works out to Rs.90,000/-.

12. Also, the Tribunal has not awarded any amount under the head 'loss of income during the treatment period'. It is borne out from records that the appellant - claimant was taking treatment for three months and was earning a sum of Rs.13,000/- to Rs.15,000/- per month. Though the said

amount cannot be taken as such, for loss of income during the treatment period, this Court feels it appropriate to award a sum of Rs.8,000/- per month under this head. Hence, a sum of Rs.24,000/- is awarded under the head 'loss of income during the period of treatment'. Further, this Court cannot turn a blind eye under the heads pain and suffering, extra nourishment, attender charges, transportation, amenities and damages to clothes. Hence, Rs.30,000/-, Rs.5,000/-, Rs.5,000/-, Rs.5,000/-, Rs.10,000/- and Rs.1,000/- are awarded respectively under those heads.

13. In the light of the above, the above Civil Miscellaneous Appeal is partly-allowed by enhancing the total compensation to Rs.1,70,000/- together with interest at the rate of 7.5% per annum from the date of petition and costs. The second respondent is directed to deposit the modified amount of compensation as ordered above less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the entire amount to the Savings Bank Account of the appellant / claimant through RTGS within one week thereafter. Needless to point out that the appellant is not entitled to any interest for the default period, if any and the appellant shall pay the Court fee for the enhanced compensation amount before receiving the copy of this judgment. No costs.

*Xerox copy of the Memo of Compromise enclosed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1.The II Judge,

The Motor Accidents Claims Tribunal
(II Judge, Small Causes Court), Chennai.

2.The Section Officer,

VR Section, High Court, Madras.

+1cc to Mr.M.Lokesh, Advocate, S.R.No.98335

+1cc to Mr.K.Poomalai, Advocate, S.R.No.98880

CMA.No.3112 of 2019

BR(CO)

CB(17/08/2020)