

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.531 of 2014

G.Kannan

... Appellant

Vs.

1. K.Moorthy

2. The New India Assurance Co., Ltd.,
No.46, Moore Street,
Chennai - 1.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 15.12.2003 made in M.C.O.P.No.3074 of 2000 on the file of learned Additional District Judge, Fast Track Court - V, Chennai / Motor Accident Claims Tribunal, Chennai.

For Appellant :Mr.K.R.Ponuswamy

For Respondents :Mr.M.Krishnamoorthy for R2
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 15.12.2003 made in M.C.O.P.No.3074 of 2000 on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court - V, Chennai.

2. The case of the appellant is that on 21.11.1995, he was travelling 1st respondent's van bearing registration no.TN04B 3515. When the van was proceeding in Kamarajar Salai, near Gandhi Statue, Chennai, the owner cum driver of the van / 1st respondent drove the vehicle in a rash and negligent manner and applied sudden brake, therefore, van lost its control and was over turned. In consequence, the appellant sustained grievous injuries. He was admitted at Royapettah Hospital and thereafter, he was sent to Stanley Medical College Hospital. At the time of accident, he was aged 26 years and prior to the accident, he was working as a loadman in Uthaman Roadways and was earning Rs.100/- per day and if he does more work he could earn more money. Since he had sustained grievous injuries in the

accident, he filed a Claim Petition under Section 166 of Motors Vehicle Act and Rule 3 of M.A.C.T.Rules, against the respondents who are the owner-cum-driver of the van, which made accident and the Insurance company, in which the vehicle was insured respectively, before the Motor Accident Claims Tribunal Additional District Judge [Fast Track Court V] Chennai, claiming Rs.1,50,000/- as compensation under various heads.

3. Denying the allegations of the appellant/claimant, the 2nd respondent / Insurance Company filed a counter affidavit before the Tribunal, contending that the appellant has to prove that the van was possessing valid insurance at the time of accident and has to prove the employment of the appellant. Further, the counter affidavit proceeded to state that the complaint has been placed after five months from the date of accident and has denied the age, occupation and income of the appellant. It is further averred that the accident has not been intimated by the 1st respondent. Hence, sought for dismissal of the petition filed by the claimant.

4. During the trial before the Tribunal, on the side of the appellant/claimant, the claimant himself examined as P.W.1, Doctor, was examined as P.W.2 and the authorised person from the employer of the appellant was examined as P.W.3 and filed the following documents i.e. Exs.P1 to P8.

- Ex.P1 : Copy of F.I.R
- Ex.P2 : Sketch AR Copy
- Ex.P3 : O.P.Chit
- Ex.P4 : Discharge Summary
- Ex.P5 : O.P. Chit - Stanley Hospital
- Ex.P6 : Disability certificate
- Ex.P7 : X-ray
- Ex.P8 : Authorisation Letter

5. On the side of the respondents, none were examined and no documents were filed.

6. The Tribunal, after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to rash and negligent manner of driving of owner-cum-driver of the 1st respondent's van. After considering the evidence of P.W.3, authorised person of the employer of the appellant stating that the appellant is coolie and would not have work for all days, the Tribunal has fixed the average income at Rs,2000/- per month and awarded Rs.8,000/- to the appellant and that the Tribunal has not accepted the 60% disability assessed by the Doctor. However, considering the injuries sustained by him, the Tribunal has come to the conclusion that he would have suffered loss of income due to

restriction of movement. As such, the Tribunal, considering all the above aspects, allowed the petition filed by the claimant and awarded Rs.48,000/- as compensation to the claimant under various heads, which are as follows:

S.No.	Description	Amount awarded (Rs.)
1.	Loss of earning	8,000
2.	Pain and Suffering	9,000
3.	Continuing Disability	25,000
4.	Loss of Earning Power	5,000
5.	Transport to Hospital	500
6.	Extra Nourishment	500
7.	Total	48,000

7. Aggrieved by the award, the appellant/claimant has filed the present appeal before this Court.

8. The learned counsel for the appellant would submit that prior to the accident, the appellant was able to do work and he earned more money by doing coolie work, and therefore, he seeks to enhance the amount of Rs.8,000/- fixed by the tribunal towards loss of income and Rs.25,000/- towards continuing disability by taking into account 60% disability assessed by the Doctor.

9. The learned counsel for the 2nd respondent Insurance Company would vehemently argue that there is no proof filed regarding the disability sustained, and the doctor who witnessed before the Tribunal is not the person actually treated the claimant. But, considering his evidence and documents produced, the Tribunal has come to the conclusion that the claimant would have suffered loss of income due to restriction of movement due to disability. Further, he would aver that there is a delay of five months in lodging the complaint, hence seeks to dismiss the appeal.

10. Heard the learned counsel on either side and perused the documents placed on record.

11. The argument put forth by the learned counsel for the 2nd respondent / Insurance company that there is a delay in lodging complaint cannot be accepted by this Court because of the reason that a person, being 26 years old, doing coolie work,

had suffered head injury and the said person cannot be expected to go to the police station rather than proceeding to the hospital for taking treatment. Therefore, the aforesaid contention of the 2nd respondent is rejected. Insofar as the plea put forward by the learned counsel for the 2nd respondent that there is no evidence produced by the appellant that he was working as coolie and he is not authorised to drive in the said vehicle met with the accident is concerned, since there is no evidence let in before the trial court and that the appeal has been filed by the claimant and the respondent /insurance company has not filed any cross appeal before this Court, these factual aspects, cannot be contended that too at this distance point of time, hence this plea also stands rejected.

12. Though P.W.3, who is the authorised person of the appellant's employer had deposed that the appellant was working as coolie and had earned Rs.100/- or even Rs.200/- per day, the Tribunal has fixed the average income of the appellant as Rs.2,000/- and calculated loss of earning for four months, thereby awarded a sum of Rs.8,000/-(2,000x4) but, considering the grievous injuries sustained by him, he would not have gone for work atleast for six months and he would have suffered a Loss of earning of minimum of Rs.2,500/- per month. Therefore, the amount Rs.8,000/- awarded by the Tribunal towards Loss of earning is hereby enhanced to Rs.15,000/- (2500x6).

13. Though the Tribunal has accepted that Subluxation of C4 and C5 Cervicle would cause severe pain, has granted only a sum of Rs.9,000/- towards pain and suffering, and the same is hereby enhanced to Rs.30,000/- because of the reason that the appellant is not able to move his neck and lift his head above certain length, which is evident from the Doctor's evidence, P.W.3, however, the same has not been taken into consideration by the Tribunal. The appellant has suffered 60% disability due to the injuries sustained in the accident, the Tribunal has erred in not considering the report and deposition of Dr.Thiagarajan, P.W.2 by stating that he is not the person, who had given treatment and wrongly proceeded to award a sum of Rs.25,000/- towards Continuing Disability, this Court is inclined to accept the report of the Doctor, P.W.3 and the disability certificate, Ex.P.6, and hereby a sum of Rs.2,000/- is awarded towards per percentage for the disability of 60%. Accordingly, the appellant is entitled to a compensation of Rs.1,20,000/- (60 X 2,000) towards disability. The amount of Rs.5,000/- awarded by the Tribunal under the head of Loss of Earning power is hereby confirmed. Further, Tribunal has awarded a sum of Rs.500/- each towards Transportation and Extra Nourishment and the same is hereby enhanced to Rs.1,000/- each. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of earning	8,000	15,000	Enhanced
2	Transport to Hospital	500	1,000	Enhanced
3	Extra Nourishment	500	1,000	Enhanced
4	Pain and Suffering	9,000	30,000	Enhanced
5	Continuing Disability: Disability at 60% at Rs.2,000/percentage	25,000	1,20,000	Enhanced
6.	Loss of Earning Power	5,000	5,000	Confirmed
	Total	48,000	1,72,000	Enhanced by Rs.1,24,000/-

14. It is pertinent to point out that earlier this Court has passed a conditional order on 28.01.2014 to condone the delay of 2042 days in filing the present appeal in M.P.No.2 of 2013 and the same has been complied with and the certificate of compliance was also filed, hence M.P.No.2 of 2013 in C.M.A.Sr.43945 of 2010 was allowed and the delay of 2042 days was condoned. However, making it clear that in the event of allowing the appeal, the claimant would not be entitled for interest of the award amount for the delay period. Accordingly, interest cannot be awarded for the delay period, viz., 2042 days.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation Rs.48,000/- awarded by the Tribunal by order dated 15.12.2003 in M.C.O.P.No.3074 of 2000, is hereby enhanced to Rs.1,72,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit (excluding the delay period, viz., 2042 days). The 2nd respondent / Insurance company is directed to deposit the enhanced award amount as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. After

depositing the amount, the appellant/claimant is directed to file a formal petition before the concerned court and withdraw the amount, less the amount if any, already withdrawn, within a period of two weeks. This Court directs the Appellant to pay the Court fee for the enhanced amount, [if not already paid] which the Registry shall collect before drafting the decree. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

The Additional District Judge, Fast Track Court -V, Chennai
/ Motor Accident Claims Tribunal, Chennai.

Copy to

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

+1cc to M/s.Anand and Surya's, Advocates Sr.64593
+1cc to Mr.M.Krishnamoorthy, Advocate Sr.64307

C.M.A.No.531 of 2014

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