

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2415 of 2006

B.Soundarrajan .. Appellant/Petitioner
Vs.

1.Jaffer Ali
(R1 given up as he was set
exparte before Tribunal)

2.National Insurance Company Limited,
Divisional Office,
Nehru Street, Pondicherry. .. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.09.2005 made in M.C.O.P.No.38 of 2005 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi.

For Appellant : Mr.R.Muralidharan
For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.09.2005 made in M.C.O.P.No.38 of 2005 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi.

2.The appellant is the claimant in M.C.O.P.No.38 of 2005 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi. He filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.08.2003.

3.According to the appellant, on 13.08.2003 at about 22.00 hours, while he was travelling as owner of the goods in the three wheeler belonging to the 1st respondent on Chennai - Trichy Main Road, the driver of the vehicle drove the same in a rash and negligent manner and dashed against a Tamarind Tree and caused the accident. In the accident, the appellant sustained multiple injuries all over his body. Therefore, the appellant filed the said claim petition, claiming a sum of Rs.10,00,000/-

as compensation for the injuries sustained by him against the respondents 1 and 2, being the owner and insurer of the three wheeler.

4.The 1st respondent-owner of the three wheeler remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company, being the insurer of the three wheeler filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent-Insurance Company, the accident did not take place due to rash and negligent driving by the driver of the three wheeler belonging to the 1st respondent. The appellant is not the owner of the goods. The three wheeler belonging to the 1st respondent was not insured with the 2nd respondent-Insurance Company and the driver of the three wheeler did not possess valid driving license at the time of accident. The appellant has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1, Dr.Shanmugasundaram was examined as P.W.2 and Dr.Sundaramoorthy was examined as P.W.3 and 7 documents were marked as Exs.P1 to P7. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the three wheeler belonging to the 1st respondent and dismissed the claim petition on the ground that the appellant failed to prove his nature of injuries and treatment taken by him.

8.Challenging the order of dismissal dated 05.09.2005 made in M.C.O.P.No.38 of 2005 and for granting compensation, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal having held that the accident has occurred due to rash and negligent driving by the driver of the three wheeler belonging to the 1st respondent, erred in dismissing the claim petition. The appellant filed Ex.P2/wound certificate and examined the Doctor who issued the wound certificate as P.W.3. P.W.2/Doctor has certified that the appellant suffered 65% disability. The Tribunal erred in not considering the documents filed by the appellant and dismissed the claim petition and prayed for setting aside the award of the Tribunal dismissing the claim petition and for granting compensation to the appellant.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced any document to show that when he was admitted in the hospital and particulars of treatment and discharge summary. The Doctors examined by the appellant as P.W.2 and P.W.3 are not the Doctors who treated the appellant. The Tribunal has rightly rejected the claim petition on the ground that appellant failed to prove the injuries and treatment taken by him and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

12.From the award passed by the Tribunal, it is seen that the Tribunal has rejected the claim of the appellant on the ground that the appellant failed to prove his nature of injuries and particulars of hospital where he took treatment. From the award of the Tribunal, it is seen that the appellant has examined two Doctors as P.W.2 and P.W.3 and marked wound certificate as Ex.P2 and disability certificate as Ex.P6. In addition to that, the appellant has marked the C.T.Scan Report as Ex.P3 and Ex.P7/X-Ray. The appellant marked Ex.P4/bills for the medical expenses. The Tribunal rejected Ex.P2 and evidence of P.W.3/Doctor on the ground that there is no evidence to show that Ex.P2 was issued by P.W.3/Doctor based on the Accident Register. The Tribunal failed to consider that in the accident the appellant sustained injuries and he took treatment. To substantiate the same, the appellant has filed Ex.P3/C.T.Scan Report, Ex.P7/X-Ray and Ex.P4/medical bills.

13.In the appeal, the learned counsel appearing for the appellant has filed the typed set of papers containing discharge summary and case history issued by the Apollo Hospital and details of further treatment, after serving a copy to the learned counsel, who is appearing for the 2nd respondent. In the discharge summary, it has been mentioned that the appellant is a case of road traffic accident on 14.03.2003. It is also mentioned in the discharge summary that the appellant was treated at General Hospital, Kallakurichi followed by Gopi Hospital in Salem, where the C.T.Scan for Brain was done. This discharge summary which was issued by the Apollo Hospital shows that before the appellant being treated in the Apollo Hospital, he was admitted in the Gopi Hospital, Salem, where the C.T.Scan for Brain was done. The nature of injuries and treatment are also mentioned in the discharge summary. A perusal of the discharge summary shows that the appellant was admitted on 27.08.2003, a surgery was conducted on 29.08.2003 and he was discharged on 10.09.2003. The 2nd respondent-Insurance Company

has not disputed before the Tribunal Exs.P3, P4 and P7. For the above reason, the finding of the Tribunal that appellant failed to prove the nature of injuries and treatment taken in the hospital is set aside.

14.The accident has occurred in the year 2003, the award of the Tribunal is dated 05.09.2005 and appeal is of the year 2006. Therefore, without remanding the matter back to the Tribunal, this Court is of the considered opinion that quantum of compensation can be decided based on the materials available before this Court.

15.The appellant has produced Ex.P6/permanent disability certificate issued by P.W.2/Doctor and also filed Ex.P2/wound certificate issued by P.W.3/Doctor and examined both the Doctors as P.W.2 and P.W.3. The 2nd respondent has not let in any contra evidence to disprove the evidence of P.W.2 and 3/Doctors and Exs.P2 and P6. The appellant was aged 37 years at the time of accident and suffered 65% disability. The appellant has not filed any document to show that he suffered functional disability and lost his earning capacity. Hence, the appellant is not entitled to compensation by adopting multiplier method. The accident is of the year 2003 and hence, a sum of Rs.65,000/- (Rs.1,000/- X 65% of disability) is awarded towards disability at the rate of Rs.1,000/- per percentage of disability. The appellant has taken treatment in Government Hospital, Kallakurichi, Gopi Hospital, Salem and Apollo Hospital, Chennai. From the discharge summary issued by the Apollo Hospital, Chennai it is seen that the appellant has taken treatment as in-patient from 27.08.2003 to 10.09.2003 and underwent surgery on 29.08.2003. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,000/- each towards attendant charges and extra nourishment, Rs.20,000/- towards pain and sufferings, Rs.15,000/- towards loss of amenities and Rs.1,000/- towards damages to clothes are awarded. The appellant claimed that he was running S.K.Steel Shop and was earning a sum of Rs.15,000/- per month. He has not filed any document to prove the said contention. Considering the fact that accident has occurred on 13.08.2003, the notional income of the appellant is fixed at Rs.3,000/- per month. Due to the injuries and disability, the appellant would not have worked atleast for a period of 12 months. A sum of Rs.36,000/- (Rs.3,000/- X 12 months) is granted towards loss of income for 12 months. The appellant claimed that he has spent a sum of Rs.1,45,910/- towards medical expenses and produced Ex.P4/Medical Bills. The 2nd respondent-Insurance Company did not disprove the same. Therefore, a sum of Rs.1,45,910/- is awarded towards medical expenses. Thus, a sum of Rs.3,12,910/- is awarded as compensation by this Court, details as follows:

S. No	Description	Amount awarded by this Court (Rs)
1.	Disability	65,000/-
2.	Pain and sufferings	20,000/-
3.	Extra nourishment	15,000/-
4.	Attendant charges	15,000/-
5.	Loss of income	36,000/-
6.	Medical expenses	1,45,910/-
7.	Loss of amenities	15,000/-
8.	Damages to clothes	1,000/-
	Total	Rs.3,12,910/-

16. In the result, this Civil Miscellaneous Appeal is allowed and a sum of Rs.3,12,910/- is awarded by this Court together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.38 of 2005 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs by making necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal,
Fast Track Court
Kallakurichi.

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

+1 CC to Mr.R.Muralidharan, Advocate sr 21632
+1 CC to M/s.R. Sreevidya, Advocate sr 22093.

C.M.A.No.2415 of 2006

BS (CO)
SP(04/02/2021)