

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3277 of 2009

and

M.P.No.1 of 2009

National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 600 002.

... Appellant/2nd Respondent

Vs.

1. S.Selvaraj ...1st Respondent/Petitioner

2. R.Babulal ... 2nd Respondents/
1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 30.04.2009 made in M.C.O.P.No.4962 of 2003 on the file of III Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.S.Vadivel

For R1 : Mr.A.Shanmugaraj

R2 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.04.2009 made in M.C.O.P.No.4962 of 2003 on the file of III Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

2. The case of the appellant is that on 29.04.2003 at about 7.30 a.m., the first respondent was standing in the Mint Street at Chennai. At that time, the second respondent's car bearing Registration No.TN-02-K-4305 came in a rash and negligent manner and dashed against the first respondent. As a result, the first respondent sustained grievous injuries and immediately he was

admitted for treatment at Doctor Mohan Ram Memorial Hospital. At the time of accident, he was aged 55, and before the accident, he was working as a driver and was earning Rs.4,200/- per month. Due to the injuries sustained in the accident, he became permanently disabled. Hence he filed a petition before the III Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, claiming Rs.11,50,000/- as compensation under various heads.

3. The appellant, who is the insurer of the second respondent's car, filed a counter affidavit before the Tribunal stating that the first respondent was neither involved in the accident nor suffered any injuries as alleged in the petition. Hence, they were not liable for the claim. Further, it has been stated that the first respondent has to strictly prove that the said car was owned by the second respondent and the same was insured with the appellant. Moreover, it has been stated that the alleged age, occupation, income and disability were not true and the amount of compensation claimed was highly excessive.

4. During the trial, on the side of the first respondent/claimant, the first respondent himself was examined as PW1, one Dr.N.Saichandran was examined as PW2 and Exs.P1 to P25 were marked. On the side of the appellant and the second respondent, neither any witness was examined nor any document was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondent/claimant and awarded Rs.7,21,883/- as compensation as given below :

S.No.	Description	Amount
1.	Loss of Earnings	2,52,000
2.	Transportation	5,000
3.	Extra Nourishment	5,000
4.	Damages to Cloths & Articles	1,000
5.	Medical Expenses	96,603
6.	Other Expenses	1,000
7.	Partial Permanent Disability	1,61,280
8.	Pain & Sufferings	1,00,000
9.	Loss of Amenities	50,000
10.	Loss of Expectation of life	50,000
	Total	7,21,883

6. Aggrieved by the award, the appellant has filed this appeal before this Court stating that the Tribunal erred in fixing the compensation at Rs.7,21,883/-.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

8. On perusal of the award dated 30.04.2009 passed by the III Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai, it is observed that to prove the cause of accident, the first respondent examined himself as PW1 and narrated the facts that how the accident was occurred. Also, he marked Ex.P1 the FIR copy, which was filed against the driver of the second respondent. On the side of the appellant and the second respondent, no contra evidence was let in to disprove the version of PW1, therefore, the Tribunal has held that the driver of the second respondent was the cause for the alleged accident. Further, it is observed that as per the insurance particulars furnished in the petition, the appellant was the insurer of the alleged vehicle, and the same was proved before the Tribunal. But the Tribunal has wrongly given liberty to the appellant to recover the award amount from the second respondent after depositing the same. This Court is not inclined to accept the same and inclined to modify the same.

9. As far as quantum of compensation is concerned, it is observed that the first respondent has marked Ex.P22 Salary slip to prove his income. The Tribunal, only after considering the same, fixed his income at Rs.4,200/- per month. Per year, which comes to Rs.50,400/-. To prove the disability, the first respondent has marked Disability Certificate and other medical records before the Tribunal. On perusal of the same, the Tribunal has found that the first respondent had sustained comminuted fracture on his left femur, hence, he underwent surgery. But in spite of the surgery, he was in continuous treatment for about 5 years due to implants failure and infection of the wounds, and therefore, the Tribunal has awarded Rs.2,52,000/- towards Loss of earnings as he would have been disabled from attending his job for the period of 5 years.

10. It is also observed that as per Ex.P24 Disability Certificate, the first respondent had sustained 70% partial permanent disability. But, while considering the nature of injuries sustained by him, the Tribunal has found that the 70% was very high, therefore, it was reduced to 40%. However, on perusal of the records, this Court finds that the 40% disability fixed by the Tribunal is very meager. Hence, inclined to enhance the same as 50% as when the surgery was made to the first respondent, his leg has been shortened by 4 inches. It is

further observed that as per Ex.P21 Driving Licence, the age of the first respondent was found to be 60 at the time of accident, therefore, the same has been fixed as his age by the Tribunal. As per the case reported in 2009 ACJ 1298 [Sarla Verma and others vs Delhi Transport Corporation and another], the multiplier for a person aged 60 is 9. But the Tribunal has wrongly applied 8 multiplier and awarded Rs.1,61,280/- towards partial permanent disability, and this Court is inclined to modify the same. Accordingly, the multiplier is modified as 9 and a sum of Rs.2,26,800/- ($4200 \times 12 \times 50\% \times 9$) is awarded for partial permanent disability.

11. Moreover, it is observed that to prove the expenses made for the treatment, the first respondent has marked all the medical bills before the Tribunal. The Tribunal, only after perusing the same, awarded Rs.96,603 for Medical Expenses. The sum of 5,000/- each awarded for Transportation and Extra Nourishment, is found to be meager. Hence, the same is hereby enhanced at Rs.10,000/- each as the first respondent had taken treatment for a period of 5 years. The sum awarded under the other heads is found to be proper and reasonable. Hence, the same is hereby confirmed.

12. In view of the observations made by this Court, 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 Earnings	2,52,000	2,52,000	Confirmed
2.	Transportation	5,000	10,000	Enhanced
3.	Extra Nourishment	5,000	10,000	Enhanced
4.	Damages to Cloths & Articles	1,000	1,000	Confirmed
5.	Medical Expenses	96,603	96,603	Confirmed
6.	Other Expenses	1,000	1,000	Confirmed
7.	Partial Permanent Disability	1,61,280 ($4200 \times 12 \times 40\% \times 8$)	2,26,800 ($4200 \times 12 \times 50\% \times 9$)	Enhanced
8.	Pain & Sufferings	1,00,000	1,00,000	Confirmed
9.	Loss of Amenities	50,000	50,000	Confirmed
10.	Loss of Expectation of life	50,000	50,000	Confirmed

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
	Total	7,21,883	7,97,403	Enhanced by 75,520

13. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant is directed to deposit the said amount of Rs.7,97,403/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar (CS VI)

/true copy/

Sub Asst. Registrar

raja

To

- The III Judge,
Small Causes Court (Motor Accident Claims Tribunal),
Chennai.

C.M.A.No.3277 of 2009

and

M.P.No.1 of 2009

WEB COPY

svl(co)
aa04/01/2021