

In the High Court of Judicature at Madras

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2754 of 2012

K. Subramani

..Appellant/Petitioner

Versus

1. A.M. Vijayammal,

2. M/s. United India Insurance Co. Ltd.

No.14, Whites Road, Gudrasan Building,
2nd Floor, Chennai

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 09.08.2011 made in M.C.O.P.No.815 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub-Ordinate Judge, Kancheepuram), Kancheepuram.

For Appellant : Mr.N.Veerassamy

For Respondent-2 : Mr.M.J.Vijayaragavan
Respondent-1- Exparte

J U D G M E N T

The petitioner/claimant has filed this appeal against the Judgment and decree in M.C.O.P.No.815 of 2003 dated 09.08.2011 on the file of the Motor Accident Claims Tribunal, (Sub-ordinate Judge), Kancheepuram, questioning the quantum of compensation awarded to him.

2. The appellant herein was the petitioner/claimant before the Tribunal and the 1st respondent herein is the owner of the offending bus and the 2nd respondent is the Insurance company in which the offending vehicle was insured at the time of the accident. For the convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of the case briefly are as under:

On 30.10.2002 at about 4.15pm while the petitioner/appellant herein was proceeding in a bi-cycle along

with his daughter as a pillion rider on the extreme left side of the Highway Road, towards Chengalpat direction, one Bharathi bus bearing registration No.TN 23 S 3535 belonged to the 1st respondent herein insured with the 2nd respondent herein came in an opposite direction towards Kancheepuram in a rash and negligent manner and suddenly and unexpectedly turned on the wrong side of the road and hit against the cyclist-petitioner/appellant herein. In the result, the petitioner/appellant herein and his daughter-pillion rider were thrown away on the road and both of them were sustained grievous injuries. Both of them were admitted immediately in the Government Hospital, Kancheepuram and then they were referred to Madras Government Hospital. In this regard, a case in Crime No.518 of 2003 has been registered against the driver of the Bus. In view of the injuries sustained in the accident, the petitioner/appellant herein has approached the Tribunal by filing a claim petition in M.C.O.P. No.815 of 2003 seeking for compensation a sum of Rs.1,00,000/- (Rupees One Lakh Only). After trial, the petitioner was awarded a sum of Rs.14,850/- (Rupees Fourteen Thousand Eight Hundred and Fifty only) against Rs.1,00,000/- (Rupees One Lakh Only) as compensation for the injuries sustained in the accident directing the respondents to pay the same jointly or severally.

4. Being aggrieved by the award, the petitioner has filed the present appeal seeking for enhancement of the award passed by the Tribunal.

5.The learned counsel for the appellant would submit that even though it was confirmed by the Tribunal that the aforesaid accident was occurred due to the rash and negligent driving of the driver of the bus, after perusing the entire oral and documentary evidence placed by the petitioner side, a lower compensation amount of Rs.14,850/- (Rupees Fourteen Thousand Eight Hundred and Fifty only) was awarded to the petitioner without considering the injuries sustained by the petitioner and oral and documentary evidence were not let in by the respondent side. He has further submitted that the Tribunal failed to note that in case of permanent disablement, even under the head of No fault liability, the claimant/petitioner has to be awarded a sum not less than Rs.25,000/- (Rupees Twenty Five Thousand Only) but in this case, the quantum of compensation awarded by the Tribunal is very lower amount of Rs.14,850/- (Rupees Fourteen Thousand Eight Hundred and Fifty only). Hence, this Court may be pleased to increase the compensation amount in favour of the petitioner accordingly.

6. The learned counsel for the Insurance Company/ 2nd respondent herein would submit that the Tribunal has rightly awarded after taking into consideration the entire oral and

documentary evidence placed before it. Since the petitioner/appellant herein has sustained simple injury in the accident and he was not given treatment in the Hospital for a long period, the compensation has been awarded accordingly. There is no infirmity in the award amount. Hence, the appeal filed by the appellant is not sustainable and liable to be set aside.

7. Heard, the learned counsel for both sides and perused the material available on record. The 1st respondent who is the owner of the vehicle, was set-exparte since he was remained absent before this Court as well as before the Tribunal.

8. Before the Tribunal, the petitioner/appellant herein examined himself as P.W.1. Seven Documents were marked as Ex.P1 to Ex.P7. No oral and documentary evidence were let in on the side of the respondents.

9. On perusal of the award, it is seen that after corroborating entire evidence placed before the Tribunal, the Tribunal has awarded the compensation amount of Rs.14,850/- to the petitioner/appellant herein according to records placed before it. However, the petitioner has mainly contended that in the case of No fault liability, the petitioner has to be awarded a sum not less than Rs.25,000/- as per norms or principles as laid by the Hon'ble Supreme Court.

10. In the case on hand, the Tribunal has confirmed the rash and negligent on the part of the driver of the Bus and fixed the liability on the side of the 1st respondent. As a result, the 1st and the 2nd respondent were directed to pay the compensation amount of Rs.14,850/- to the petitioner/appellant herein jointly or severally due to the multiple injuries sustained by the the petitioner/appellant herein in the aforesaid accident.

11. Having considered the aforesaid facts and circumstances and submission made by the learned counsel for the appellant, this Court is of the considered view that the award amount fixed by the Tribunal shall be modified from Rs.14,850/- to Rs.25,000/- after taking into consideration that on the basis of No fault liability, the injured or deceased would have been awarded the compensation not less than Rs.25,000/- as per principles laid by the Hon'ble Supreme Court. Hence, the Insurance company is directed to deposit the modified award amount of Rs.25,000/- along with interest @ 6% p.a. from the date of petition till the date of realization, to the credit of M.C.O.P. No.815 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub-Ordinate Judge), Kancheepuram within a period of three weeks from the date of receipt of copy of this Judgment.

12. On such deposit, the petitioner/appellant herein is entitled to withdraw the award amount after filing a formal petition before the concerned Tribunal.

13. In the result, the Civil Miscellaneous Petition is allowed in part and the award passed by the Tribunal in M.C.O.P. No.815 of 2003 is modified accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

lbm

To

Motor Accident Claims Tribunal
(Sub-Ordinate Judge, Kancheepuram), Kancheepuram.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.J. Vijayaragavan, Advocate SR.No.11982

+1cc to Mr.N.Veerassamy, Advocate SR.No.12051

C.M.A.No.2754 of 2012

GJ(CO)

GMV(17/04/2021)

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