

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2727 of 2013

Narasimman

... Appellant/Claimant

Vs

1.V.Narayanan

2.The United India Insurance Co., Ltd.,
Divisional Manager Office,
Katpadi Road, Vellore ... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.A.C.T.O.P.No.235 of 2006 on the file of Motor Accidents Claims Tribunal (Sub Judge) Vellore District dated 09.10.2009.

For Appellant : Mrs. Subadra for
Ms.Malar

For Respondents : Mr.C.Paranthaman for R2
R1-Exparte

J U D G M E N T

The appellant herein, who is the claimant has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.235 of 2006 on the file of Motor Accidents Claims Tribunal (Sub Judge) Vellore District dated 09.10.2009.

2. The case of the appellant / claimant is that on 10.02.2006, at about 7.00 a.m., the appellant was proceeding in a motor cycle bearing Reg.No.TN 25X-1707 with his wife on the pillion, in M.B.T. Road, Walajapet near Theradi from West to east, at that time, the sand lorry bearing Reg.No.TCW-543 owned by the 1st respondent was driven by its driver in a rash and negligent manner with high speed, came in a opposite side and hit on the appellant's vehicle. As a result of the said

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accident, the appellant had sustained grievous injuries including fracture. The appellant was immediately taken to the Government Hospital at Walajapet and Medical College and Hospital, Vellore for treatment. Since the 1st respondent is the owner of the lorry and the 2nd respondent is the insurer of the lorry, the appellant claims compensation for a sum of Rs.4,00,000/- against both the respondents. According to the appellant, he was a self employed person and was earning a sum of Rs.6,000/- per month before the accident.

3. In contrary, the 2nd respondent / Insurance Company has filed a counter denying all the averments of the appellant. It is the appellant, who had driven the vehicle in a rash and negligent manner without following any rules and all of a sudden stopped the vehicle without applying any signals. Hence the accident had occurred only due to the negligent driving of the motor vehicle, therefore, the 2nd respondent, being a insurer is not liable to compensate the appellant, thereby seeks to dismiss the claim petition.

4. The Tribunal after considering all the averments, counter averments, the materials available on record and on examining the witnesses, had awarded a sum of Rs.37,000/- to the appellant, which are as follows:- Being not satisfied with the said award, the appellant is before this Court.

Sl.No	Name of Heads	Amount awarded by Tribunal
1	Loss of earning and loss of earning capacity	Rs.10,000/-
2	Pain and sufferings	Rs.15,000/-
3	Medical Expenses	Rs.10,000/-
4	Transportation Charges	Rs.1,000/-
5	Nutrition expenses	Rs.1,000/-
TOTAL		Rs.37,000/-

5. The learned counsel for the appellant submits that the Tribunal failed to consider the Doctor's evidence, viz., P.W.2, when the Doctor had assessed 45% disability, the Tribunal had awarded only a sum of Rs.10,000/- towards loss of earning and loss of earning capacity. This Court in 2008(1) TNMAC Page 8 had raised Rs.1,000/- per percentage to Rs.2,000/- per percentage and the same was not taken note by the Tribunal while awarding compensation to the appellant.

6. The learned counsel for the appellant contended that the appellant had sustained grievous injuries, viz., fracture in the

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metatarsal bone in the left leg and the Tribunal ought to have considered the same and fixed the loss of income to the appellant. The Tribunal erred in not awarding any amount towards various heads, hence seeks to enhance the compensation.

7. Though notice was ordered to the 1st respondent as early as on 22.08.2013, there is no representation for the 1st respondent, he was set exparte before the Tribunal.

8. The learned counsel for the 2nd respondent / Insurance Company reiterates the averments in the counter filed before the Tribunal and further submits that the compensation awarded to the appellant is a just and meager and pleaded to dismiss the appeal filed by the appellant.

9. Heard the learned counsel for the appellant and the 2nd respondent and perused the materials placed on record.

10. From the perusal of the order passed by the court below, it is seen that Ex.P.1, FIR corroborates with the evidence given by P.W.1, viz., appellant. As per, Ex.P.1, FIR, the negligence has been rightly fixed on the driver of the lorry owned by 1st respondent. Ex.P.3, Motor Vehicle Inspector's report clearly say that there is mechanical defect in the vehicle. Ex.P.4 is the charge sheet and the same is filed against one Parthiban, who is the driver of the lorry. At the time of accident, the insurance policy was in existence and the same is evident from Ex.P.6. Further, the driver of the lorry had accepted the mistake and had paid the fine amount. However, there is no contra evidence on behalf of the 2nd respondent to refute the same. In the absence of any evidence on behalf of the 2nd respondent, the Tribunal had rightly held that the respondents 1 and 2 are jointly and severally liable to compensate the appellant.

11. On behalf of the appellant, Ex.P.2, Wound certificate was marked before the Tribunal and on perusal of the same, it is seen that the appellant had suffered grievous injuries and the Doctor, viz., P.W.3 who had examined the appellant had deposed that the appellant had suffered left foot 5th bone fracture and on account of the same, he could not walk properly with the left leg and had assessed permanent disability to the extent of 45%, but the Tribunal has not awarded any amount towards permanent disability, however, awarded only a sum of Rs.10,000/- towards loss of earning and loss of earning capacity. Therefore, this Court, taking shelter of Ex.P.2, Wound certificate and the deposition of P.W.3, wherein the Doctor had stated that the appellant had suffered left foot 5th bone fracture and on account of the same, he is not able to walk properly, thereby fixed 45%

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disability, hence by awarding Rs.1,000/- per percentage, is inclined to award a sum of Rs.45,000/- towards 'permanent disability'. [45%X1,000/-]. Moreover, taking note of the fact that due to the grievous injuries sustained by the appellant, he would not have gone for work for atleast some time, hence a sum of Rs.10,000/- awarded by the Tribunal under the head 'Loss of earning and loss of earning Capacity' is hereby confirmed as 'Loss of earning during treatment'.

12. That apart, the Tribunal had erred in not awarding any amount towards Attender Charges, from the Ex.P.2, Wound Certificate and deposition of P.W.3, it is evident that the appellant had suffered fracture in the left leg and definitely, a person would have accompanied him to carryout his day today activities, hence a sum of Rs.5,000/- is hereby awarded towards Attender Charges. Further, the Tribunal has awarded a sum of Rs.1,000/- each towards Transportation and Nutrition expenses, which are only a meager amount, hence, a sum of Rs.5,000/- each is hereby awarded towards Transportation expenses and Nutrition Expenses. Except the said modifications, all the other amount awarded by the Tribunal under the various heads stand confirmed. The modified amount by this Court is tabulated hereunder:-

Sl. No	Name of Heads	Amount awarded by Tribunal	Enhanced / confirmed	Amount awarded by this Court
1	Loss of earning and loss of earning capacity	Rs.10,000/-	-Confirmed	-
2	Loss of earning during treatment	-	Granted	Rs.10,000/-
3	Pain and sufferings	Rs.15,000/-	Confirmed	Rs.15,000/-
4	Medical Expenses	Rs.10,000/-	Confirmed	Rs.10,000/-
5	Transportation Charges	Rs.1,000/-	Enhanced	Rs.5,000/-
6	Attenders Expenses	-	Granted	Rs.5,000/-

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7	Permanent Disability	-	Granted	Rs.45,000/-
8	Nutrition Expenses	Rs.1,000	Enhanced	Rs.5,000/-
TOTAL				Rs.95,000/-

13. In total, a sum of Rs.95,000/- is awarded to the appellant. The respondents, jointly or severally are directed to deposit the said amount within a period of six weeks from the date of receipt of copy of this order with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

With the above said observations and directions, the present Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accidents Claims Tribunal
(Sub Judge) Vellore District.

Copy to:

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

+1cc to M/s.M.Malar, Advocate SR.9627

+1cc to Mr.C.Paranthaman, Advocate SR.9147

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CB(28/12/2020)

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