IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2546 of 2019

Kalaiselvan .. Appellant/Claimant

Vs.

1. S.Ramya

2. The Branch Manager,
M/s.National Insurance Co. Ltd.,
First Floor, No.7/1, West Car Street,
Sivakasi - 626 123. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree made in M.C.O.P.No.1154 of 2015 dated 23.01.2019, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondent 1 : Ex parte

For Respondent 2 : Mr.S.Vadivel

J U D G M E N T

Not feeling satisfied with the compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. According to the claimant, on 24.02.2015, at about 06.00 p.m., when he was riding a two wheeler on Chennai - Trichy highway, a car bearing Registration No.TN-58-AZ 6707, owned by the first respondent, which was insured with the second respondent, came in a rash and negligent manner and dashed against the appellant/claimant, due to which the appellant/claimant sustained serious injuries and fractures. Immediately, he was taken to the Government Hospital, Perambalur, after getting first aid, he was admitted at Lakshmi Hospital, Perambalur as inpatient from 24.02.2015 to 06.03.2015 and undergone several surgeries. Due to the accident, he suffered permanent disability and he was not able to perform any duty. Hence, seeking a compensation of Rs.15,00,000/- he filed the claim petition.

3. The first respondent remained ex parte. The second respondent / insurance company contested the claim petition stating that the accident took place due to the rash and negligent driving of the claimant and he being a tortfeasor, cannot maintain the claim petition. That apart, a FIR was registered against the claimant, and he admitted his guilt and paid the fine amount. There is no negligence on the part of the driver of the car. Further, the income and the disability suffered by the claimant is also disputed.

4. In order to prove the claim, the claimant examined himself as P.W.1 and marked as many as 11 documents as Exs.P1 to P11. On the side of the second respondent / insurance company the Administrative Officer of the second respondent insurance company was examined as R.W.1 and marked two documents as Exs.R1 and R2. Disability certificate issued by the Medical Board, was marked as Ex.C1.

5. The Tribunal after considering the materials available on record came to the conclusion that it is a case of contributory negligence and 50% negligence is fixed on the claimant. So far as the quantum of compensation is concerned, the Medical Board fixed the disability at 20%. The Tribunal fixed the compensation at Rs.1,81,500/- and 50% negligence was fixed on the appellant / claimant. The Tribunal held that the appellant/claimant is therefore entitled to a sum of Rs.90,750/- as compensation with interest at 7.5 % from the date of the petition. Being aggrieved on the same, the appellant / claimant filed the present appeal seeking enhancement.

6. Mr.S.Kamadevan, learned counsel appearing for the appellant/claimant would contend that the Tribunal after considering the evidence first came to the conclusion that the claimant is not a tortfeasor and based on the FIR filed against him, the Tribunal has held that the accident had taken place due to the negligence of the claimant also and held that the second respondent / insurance company has not examined any witness to establish that due to the negligence of the claimant, the accident had taken place. Further, without assigning any reason whatsoever, fixed 50% negligence on the part of the claimant, which is totally perverse. So far as the quantum of compensation is concerned, the Tribunal did not consider the permanent disability suffered by the claimant and without applying multiplier method, simply awarded a sum of Rs.60,000/- towards disability sustained by the appellant / claimant. That apart, the medical bills produced by the appellant / claimant were also not properly considered by the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent / insurance company would contend that the 50% negligence has been fixed due to the negligent driving of the appellant / claimant in the national highway and an FIR

was also registered against him. The claimant also admitted his guilt and paid the fine. In the above circumstances, the Tribunal fixed 50% negligence on the part of the claimant. That apart, as far as the quantum of compensation is concerned, the Tribunal has rightly accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.60,000/- towards disability and on other heads also the Tribunal has rightly granted just compensation and there is no reason to interfere with the quantum of compensation awarded by the Tribunal.

8. I have considered the rival submissions and also perused the records carefully.

9. The primordial contention of the appellant / claimant is that without any evidence whatsoever, the Tribunal has fixed 50% negligence on the part of the appellant / claimant. From the perusal of the order passed by the Tribunal, it could be seen that the Tribunal has framed as many as four issues viz.,

> "(i) Whether the accident in which the petitioner is stated to be sustained injuries was occurred due to the rash and negligent driving of the driver of the first respondent ?
>
> (ii) Whether the contention of the second respondent that the rider of the bike namely the petitioner is a tort-feasor and the petitioner is not entitled to seek compensation is acceptable ?
>
> (iii) Whether the petitioner is entitled to any compensation in respect of the same ?
>
> (iv) If so, from whom the petitioner is entitled to the compensation and what is the quantum of the compensation ?"

10. Issue No.(ii) was first taken up for consideration by the Tribunal and it has been held that, earlier the appellant / claimant was admitted in a Government hospital and based on the complaint given by him, a FIR was registered against the driver of the car at 07.25 p.m. on 24.02.2015 itself. Further, another FIR was registered on 25.02.2015, against the appellant / claimant. Even though it is stated that the appellant/claimant had pleaded guilty in the criminal case, absolutely no material has been produced to substantiate the same. That apart, no witness has been examined to show that the accident took place due to the negligent driving of the claimant and that apart the driver of the car was also not examined to that effect and hence the Tribunal has held that the contention of the second respondent / insurance company that the appellant / claimant as a tort-feasor cannot be accepted and answered the said issue against the second respondent / insurance company.

11. Thereafter, the Tribunal has taken up the first issue for consideration, wherein also the Tribunal has held that the insurance company has not examined any witnesses in connection with the accident to prove the negligence of the claimant. However, mechanically came to a conclusion that the appellant/claimant had also equally contributed to the accident and fixed 50% liability on him. From a perusal of the records, it could be seen that even though it is stated that the claimant has admitted his guilt and paid the fine before the Criminal Court, no material is available on record to substantiate the same. That apart, evidence is available on record to show that the claimant has also contributed to the accident. However the Tribunal without considering the same in proper prospective, mechanically fixed 50% negligence on the part of the claimant. The above finding is perverse and it is liable to be set aside.

12. So far as the quantum of punishment is concerned, the Tribunal has granted a sum of Rs.96,500/- towards medical expenses, which is based on the medical bills produced by the appellant/claimant. So far as the loss of income is concerned, the Tribunal has rejected the claim of the appellant/claimant on the ground that there is no evidence to show that due to the accident the appellant/claimant has suffered any loss of income. For permanent disability, accepting the disability report of the Medical Board as 20% awarded compensation of Rs.60,000/- which also cannot be found fault with. Towards transportation expenses a sum of Rs.10,000/- was awarded and towards pain and sufferings a sum of Rs.10,000/- has been awarded and a sum of Rs.5,000/- was awarded towards extra nourishment.

13. Considering the fact that the appellant/claimant suffered serious fracture and admitted in the hospital for 11 days and has also undergone some treatment and he was working as a salesman in a co-operative society and getting Rs.10,000/- as monthly salary, and for at least one month the appellant/claimant could have been bedridden, hence the appellant/claimant is entitled to have a sum of Rs.10,000/- towards loss of income. As the appellant/claimant was hospitalised and was taken care by an attendant, he is entitled to another sum of Rs.8,500/- towards attendant charges. Therefore, in total, the appellant/claimant is entitled to a sum of Rs.2,00,000/- as compensation instead of Rs.90,750/- as granted by the Tribunal.

14. In the result, the Civil Miscellaneous Appeal is allowed and the order and decree passed by the Tribunal dated 23.01.2019, made in M.C.O.P.No.1154 of 2015, is set aside and respondents 1 and 2 are liable to pay the entire compensation. The appellant / claimant is entitled to a sum of Rs.2,00,000/- instead of Rs.90,750/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The respondents are directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount

already deposited, if any, 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.1154 of 2015, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant/claimant is directed to pay the necessary Court fee, in any, on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Perambalur.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 35691
+1cc to Mr.S.Kamadevan, Advocate, S.R.No. 35693

C.M.A.No.2546 of 2019

SSV(CO)
GN(23/06/2021)