

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 11.12.2020

Judgment Delivered on : 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3693 of 2010

Palanikumar
S/o. Muniandi

... Appellant/Claimant

Vs.

1. Manikandan
S/o. Kandasamy

2. S.R.C. Project (P) Ltd.,
No.40, Lakshmipuram,
Gandhi Road, Salem - 7.

3. The National Insurance Company Ltd.,
2nd Floor, Marthu Complex,
F.215, Omalur Main Road, Salem - 4. ...Respondents/
Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.32 of 2009 dated 15.07.2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.A.K.Kumarasamy

For Respondents : Mr.S.Vadivel for R3.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 15.07.2010 passed in MCOP.No.32 of 2009 by the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

2. The case in brief are as follows:

On 18.04.2007 at about 01.15 hours, the petitioner was riding Motor Cycle bearing Registration No.TN 63 W 5517 near

Komarappa Higher Secondray School, Perundurai road. At that time, the driver of the lorry bearing Registration No. TN 30 P 2984 drove the same in a rash and negligent manner, dashed against the petitioner, as a result of which, he sustained grievous injuries. Immediately, the petitioner was taken to Government Hospital, Erode and thereafter he was admitted in CMC Hospital, Coimbatore for further treatment. The first respondent sold the vehicle to the second respondent, but the name was not transferred. The third respondent is the Insurer of the said vehicle. The first and second respondents remained exparte before the Tribunal.

3.The learned counsel for the appellant submitted that the Tribunal erred in fixing the liability partly on the claimant and awarding a sum of Rs.1,29,700/- as compensation without considering the age, occupation and the injuries sustained by the claimant in the accident. He further submitted that the Tribunal erred in concluding that the claimant was not having valid driving licence on the date of the accident, without considering the fact that the third respondent did not raise the said fact in their pleadings. Therefore, he submitted that the entire negligence ought to have been fixed on the driver of the lorry. He also prayed for enhancement of compensation.

4. The learned counsel for the respondent submitted that the Tribunal was right in fixing the liability on the part of the claimant and the driver of the lorry in the ratio 50:50. He also submitted that the Tribunal, after considering all the evidences placed before the Court has awarded a just compensation. Therefore, prayed for dismissal of the appeal.

5. As per the grounds of appeal and the submissions made by the learned counsel for the appellant, the claimant before the Motor Accident Claims Tribunal, Perundurai, Erode District is the appellant before this Court. As per the appellant/claimant, the Motor Accident Claims Tribunal failed to appreciate the facts of the case in proper perspective. When P.W.2 who is a Doctor had assessed the disability of the claimant as 69.5%, without assigning any scientific reasoning, the Tribunal had reduced the disability as 40%. Therefore, the claimant was granted lesser compensation. Even though, the respondent/ Insurance Company had not raised that the claimant did not possess driving licence and not examined the claimant as P.W.1 regarding the availability of driving licence, the Tribunal had passed the order, stating that the claimant had no driving licence and as he had contributed to the accident, reduced the award by 50%. Therefore, just compensation was denied to the claimant. Also, under the non pecuniary heads, " loss of income during the period of treatment, Pain and

Sufferings, Future Medical Expenses, Extra Nourishment", the Tribunal had granted lesser amount. Therefore, just compensation was denied to the claimant/appellant before this Court.

6. The learned counsel for the Insurance Company had submitted that the reasons stated by the Tribunal are found acceptable as per the reported Rulings of the Hon'ble Supreme Court and the Hon'ble High Court. Therefore, the same does not warrant any interference by this Court and the appeal filed by the claimant has to be dismissed.

7. It is to be noted that the accident occurred on the speed breaker. The speed breakers are provided to control the speed of the vehicle. As per the sketch marked as Ex.P.2, Observation Mahazar marked as Ex.P.3, the claimant herein was proceeding from South to North, near Kumarappa Higher Secondary School, Perundurai Road at Chennimalai, Erode District. The lorry bearing Registration No. TN 30 P 2984 was proceeding towards North on the same road. Therefore, the two wheeler rider who was riding TVS 50 bearing Registration No. TN 63 W 5517 had tried to slow down the vehicle on the speed breaker, but he had not done so. He had proceeded rashly and negligently and his clothes got entangled on the hook on the side of the body of the lorry. Therefore, it is the negligence of the claimant which had contributed to the accident. Since, the lorry driver was careful, the claimant was alive, otherwise the claimant would not be alive to depose evidence before this Court. Therefore, the claimant is the tort-feasor. By various rulings of the Hon'ble Supreme Court, a tort feasor is not entitled to claim any compensation before the Motor Accidents Claims Tribunal. If at all, this Court intends to grant some relief to the appellant herein as a claimant, he is only entitled to "No Fault Liability" and a sum of Rs.25,000/- can be awarded in the maximum and not any other relief under any head.

8. Point for Consideration

Whether the appellant/claimant is entitled to enhancement of compensation.

9. Perused the claim petition in MCOP.No.32 of 2009 and counter filed by the third respondent in MCOP.No.32 of 2009, the award passed by the Motor Accident Claims Tribunal, Perundurai in MCOP.No.32 of 2009 and the memorandum of grounds of appeal.

10. On perusal of the claim petition, counter filed by the Insurance Company and the award passed by the Tribunal, it is found that the submission of the learned counsel for the appellant that when the Insurance Company had not raised the point regarding the absence of driving licence and the claimant

had not been examined in that regard, the conclusion of the Tribunal that the claimant himself had contributed to the accident as he was not having valid driving licence cannot be accepted as the Insurance Company/R3 had clearly stated that the accident was caused by the negligence of the claimant and he was not having a valid driving licence on the date of accident. The claimant had admitted in his cross examination that he did not possess any valid driving licence, has been clearly mentioned by the Tribunal in the award. Also, the Tribunal had observed in the discussion regarding the cause of accident that the conviction of the lorry driver by the learned Judicial Magistrate cannot be a reason to arrive at a conclusion that lorry driver alone contributed to the accident. It is accepted legal principle that if the findings of the learned Magistrate in a criminal case and the findings in the enquiry conducted by the Motor Accident Claims Tribunal differ, the findings of the learned Magistrate in a criminal case are not binding on the Motor Accident Claims Tribunal. The Accident Claims Tribunal conducted enquiry independently and based on the evidence available before the Motor Accident Claims Tribunal, the Tribunal arrived at a conclusion regarding negligence, who was at fault, resulting in injury or death. Here, there were materials available before the Motor Accident Claims Tribunal, Perungudi regarding the conduct of the claimant at the relevant point of time as he was confronted with rough sketch, observation Mahazar filed by the police in the criminal case which were marked on the side of the claimant resulting in the fixing of liability by the Motor Accident Claims Tribunal as 50-50. Two vehicles moving in opposite direction on the same path. The claimant's vehicle is a two wheeler. At the speed breaker any vehicle will slow down. Speed breakers are provided only to reduce the speed, which fact was available before the Tribunal. It is found that the accident occurred near the School. The public authority had laid speed breakers on the road near the school. Still it is found that from many cases, the two wheeler riders drive rashly over the speed breakers. Therefore, the claimant himself had contributed as he had moved closer to the lorry/respondent's vehicle, thereby, his dress was caught in the hook on the side of the lorry, thereby causing himself to lose balance and come in contact with the lorry. If what had been stated by the claimant in the claim petition is to be accepted, he could not have been alive on the fateful day. Only because of the careful driving by the driver of the respondent's vehicle, the claimant was alive. Therefore, the submission made by the learned counsel for the appellant cannot at all be accepted from the available material that can be assessed by the Tribunal.

11. The claimant in the claim petition has stated that he was earning Rs.1500/- per week and had clearly stated that his

monthly income is Rs.6000/- . It is not an excess claim and it is found to be a reasonable claim. On the date of accident, he was aged about 35 years. As per the reported rulings of the Hon'ble Supreme Court reported in Ankur Kapoor Vs. Oriental Insurance Co. Ltd., reported in ((2018) 1 SCC 136) The Tribunal can exercise discretion upto 10% from the disability assessed by the Doctor. Therefore, 65% is considered for convenient calculation. The Tribunal awarded a sum of Rs.2,30,400/- towards compensation for continuing permanent disability. Without applying multiplier, the Tribunal had assessed the same with lesser monthly income ie., notional income of Rs.3000/- aggrieved by which the claimant has come up with this appeal. Therefore, this Court awards a sum of Rs.7,48,800/-(72000x65% x16) towards permanent disability. Loss of income due to partial permanent disability is arrived at as follows:

Monthly Income fixed :: Rs.6000/-
Taking the multiplier as 16 for the age group 41 to 45 years
 $6000 \times 12 \times 16 \times 65 / 100 = 7,48,800/-$

12. Considering the nature of injuries sustained by the claimant and the period of treatment, the sum of Rs.5,000/- towards extra nourishment and Rs.10,000/- towards pain and sufferings awarded by the Tribunal are meagre. Therefore, this Court awards a sum of Rs.25,000/- towards extra nourishment and Rs.1,00,000/- towards pain and sufferings respectively.

13. Since the appellant had not marked any medical bills regarding the treatment, the Tribunal had notionally granted Rs.5000/- towards medical expenses and that is found to be justified and acceptable. The claim of Rs.50,000/- towards medical expenses cannot be granted without proof of medical bills. Not only that, the Tribunal conducted enquiry regarding the cause of accident and the assessment of the disability and grant of award in the course of enquiry, the claimant had let in evidence that he had undergone treatment only in Government Hospital and thereafter, discharged from the hospital. It is a case where the claimant underwent treatment at Sivaganga District in Kundrakudi Mudavaithiya Salai at Uzhavoorani. Therefore, the Tribunal awarding a sum of Rs.5000/- towards medical expenses is justified. The Tribunal awarded a sum of Rs.2000/- towards Transportation which is found to be meagre. Therefore, this Court enhances the same to Rs.15,000/- towards Transportation.

14. The Tribunal awarded a sum of Rs.6,000/- towards loss of income during the period of treatment , which is a meagre amount. As per the claim, the monthly income of the claimant is Rs.6000/-, which is not an excessive claim. Therefore, the same is accepted by this Court and a sum of Rs.12,000/- (6000x2) is

awarded towards Loss of income during the period for treatment (i.e., two months).

15. Since the amount awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Earning during the period of treatment	6,000	12,000
2	Transport to Hospital	2,000	15,000
3	Extra Nourishment	5,000	25,000
4	Damages to clothes	1,000	1000
4	Medical Expenses	5,000	5,000
5	Pain and Sufferings	10,000	1,00,000
6	Permanent disability	2,30,400	7,48,800
7	Future Medical Expenses	-	1,00,000
	Total	2,59,400	10,06,800

Rounded off - 10,00,000

16. Out of these, 50% is reduced towards contributory negligence of the appellant/claimant Rs.5,00,000/-. Therefore, the award amount is Rs.5,00,000/-.

Accordingly, this Civil Miscellaneous Appeal is allowed. The third respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.32 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai, with interest at the rate of 7.5% per annum from the date of Claim Petition till the date of deposit along with costs if any as awarded by the Tribunal, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award with accrued interest. The appellant is directed to pay

appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.12016

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.12136

judgment in
C.M.A.No.3693 of 2010

KK(CO)
KM(27/04/2021)