



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.03.2022

DATED: 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 1931 of 2018

Bala @ Balamurugan

... Petitioner/Appellant

Vs

1. Palani
(R1 remained ex-parte before Tribunal
his presence may be dispensed with)

2. Reliance General Insurance Co. Ltd.,
"RAI's Tower",
Plot No. 2054, 2nd Avenue
2nd Floor,
(next to Senthil Nursing Home)
Anna Nagar,
Chennai - 600 040.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree dated 18.02.2015 and made in M.A.C.T.O.P.No. 95 of 2011 on the file of the Motor Accident Claims Tribunal and in the Court of IV Additional District Judge, Thiruvallur, Ponneri.

For Appellant : Mr.F.Terry Chella Raja

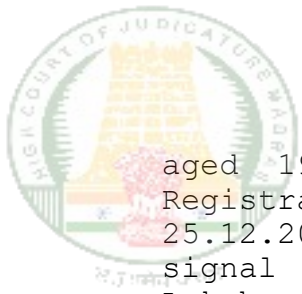
For 1st Respondent : Exparte

For 2nd Respondent : Mr. S. Arun Kumar

J U D G M E N T

The claimant in M.C.O.P.No. 95 of 2011 on the file of the IV Additional District Court, Ponneri, Motor Accident Claims Tribunal, is the appellant herein.

2. Necessity to file the claim petition before the Tribunal arose since, the appellant Bala @ Balamurugan, who was



aged 19 years and working as Cleaner in a Lorry bearing Registration No. TN - 22-C-3445 had suffered injuries on 25.12.2010 at around 5.00 a.m., when he was giving reverse signal to the lorry bearing Registration No. TN-59-M-3971 at Lakshmanan Salai, Kandhanchavadi, Chennai. At that time, the lorry driver is said to have reversed the vehicle in over speed and had dashed against the claimant. The claimant sustained injuries, which were as follows:-

"1. Traumatic diaphragmatic hernia; 2. Left pneumothorax with fracture rib 1 to 3. 3. Pelvic fracture. 4. Both left and right flank eye blood clot in both ears both nasal cavities. 5. Abrasion over anterior abdominal wall 6. ICB insertion on left side done. 7. Incision upper midline laparotomy incision and multiple abrasion and contusion injuries all over the body grievous in nature."

3. The first respondent was the owner of the lorry bearing Registration No. TN-59-M-3971 and the respondent was the insurer of the said lorry. The claimant claimed that the accident occurred only due to the rash and negligent manner, in which, the driver of the lorry reversed the lorry and dashed against him.

4. A counter was filed by the second respondent denying the averments made. It was stated that the injuries suffered, did not warrant the compensation sought. It was also stated that the respondent should be provided with leave to defend, the claim on all grounds as are available under Section 170 of the Motor Vehicles Act, 1988.

5. During the course of trial, on the side of the claimant, two witnesses were examined. PW-2 was the Doctor, who provided the disability certificate. The claimant also marked Exs. P-1 to P-11. Ex.P-2 is the copy of the Accident Register, Ex.P-3 is the discharge summary, Ex.P-4 is the O.P. Chit, Ex.P-7 was the C.T. Scan, Exs.P-8 & P-11 were the X-rays and Ex.P-10 was disability certificate.

6. The Tribunal first took up for consideration the issue of negligence. It was found that the claimant, as a Cleaner of a Lorry was giving directions to the driver of the Lorry while he, the driver, took the vehicle in reverse. The driver had reversed at high speed and had dashed against the petitioner, who sustained injuries. It was therefore held that the accident occurred only due to the negligence of the driver of the Lorry. It was also stated that owing to the fact that the Lorry was insured with the second respondent, the second respondent should be called upon to pay the compensation if ordered to the petitioner.



7. The Tribunal then took up the issue of compensation to be granted. In this connection, it was noted that the claimant was aged about 19 years old. He was working as a Cleaner and earned daily wages of Rs.200/- per day. The Doctor, who examined him was examined as PW-2. He gave a certificate that the claimant had suffered 90% permanent disability since he had sustained injuries over the chest region and over the cheek. He was not able to walk or sit properly. He had disability in the left eye. The disability certificate and the X-rays were marked as Exs. P-10 and P-11.

8. The Tribunal however determined the disability at 80%. The Tribunal determined that grant of Rs.2,000/- per percentage would meet the ends of justice. Accordingly, the Tribunal granted compensation of Rs.1,60,000/- (2000 x 80) towards 80% disability. The Tribunal also granted compensation on other heads, which were as follows:-

(i)	Loss of income	:	Rs.30,000/-
(ii)	Loss of pain and suffering	:	Rs.50,000/-
(iii)	Extra nourishment	:	Rs.15,000/-
(iv)	Transport Charges	:	Rs.10,000/-

9. The total compensation granted by the Tribunal was Rs.2,65,000/-.

Questioning that particular Judgment, the claimant had filed the present Civil Miscellaneous Appeal.

10. Heard arguments advanced by Mr. F.Terry Chella Raja, learned counsel for the appellant and Mr. S. Arun Kumar, learned counsel for the second respondent / Insurance Company.

11. Mr. F.Terry Chella Raja, learned counsel for the appellant took the Court through Ex.P-3 discharge summary and pointed out the injuries suffered by the appellant and stated that he had suffered fracture in the chest and more particularly in the ribs and pointed out the discomfort of the appellant in view of such injuries. The learned counsel therefore stated that the appellant should have been considered to suffer 90% disability, drawn the attention of this Court to the evidence of PW-2 in this regard and stated that more than sufficient evidence had been adduced before the Court to show that the appellant had actually suffered serious injuries, and suffered disability at 90%.

12. Mr.S.Arun Kumar, learned counsel appearing for the second respondent however disputed these contentions. It was



the contention of the learned counsel that Ex.P-3 itself cannot be believed because it was a note book in which entries have been made and the learned counsel stated that it was not at all a discharge summary relating to the petitioner. The learned counsel also stated that the X-ray conveyed nothing since there were no reports accompanying the X-rays. The learned counsel also stated that the accident had occurred in the year 2010 and therefore stated that the determination of Rs.2,000/- per percentage of disability was reasonable and the learned counsel stated that in view of these facts, interference of this Court with the compensation granted is not required.

13. I have carefully considered the arguments advanced.

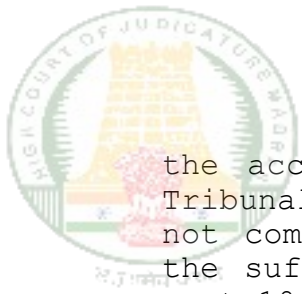
14. The disability certificate Ex.P-10 had been issued by PW-2. The records available with the Court show that Ex.P-2 is the accident Register, Ex.P-3 is the discharge summary.

15. Mr. S.Arun Kumar, learned counsel had questioned the genuinity of Ex.P-3 document. But I would rather, take into consideration the fact that Ex.P-3 had passed the tests of admissibility and relevancy during the course of trial and had been taken on file by the Tribunal. Its admissibility should have been questioned during the course of trial. It is not improbable that records in a Government hospital would have been maintained in a note book and the note book would be handed over to the patient when he was discharged.

16. The nature of injuries had been extracted above and a perusal of the same shows that the injuries a place where indicated there had been a blood clots in both the ears and in the nasal cavities and there were also injuries with fracture in the chest region and in the ribs. The Doctor had determined disability as 90% disability.

17. In the course of the order, the Tribunal had determined that the disability would 80%. The age of the appellant, at the time of the accident, was aged about 19 years. Naturally with advancement of age, the possibility of him overcoming the injuries which he had suffered is high. There has been no materials presented before this Court regarding the actual discomforts which the appellant as on date suffers.

18. In the discharge certificate, it had been stated that a review would be required after two weeks and with respect to other aspects only if required. He was advised bed rest for one month. The nature of the injuries, affect not only the breathing of the individual and if the rib bone had been broken as stated there would also be difficulties in digestion owing to the fact that the abdominal area would have been injured due to



the accident. PW-2 had assessed the disability at 90%. The Tribunal had however taken into account 80%. The appellant has not come forward to produce documents or any materials to show the suffering he had to undergo owing to the accident over the past 10 years.

WEB COPY

19. In the absence of the such materials, which could have been produced as additional documents even before this Court, it would not be proper on my part to interfere with a finding of fact that the disability can be determined at 80%.

20. The Tribunal had determined the disability at 80%. It must be kept in mind that the Tribunal had an opportunity of viewing the claimant in person when he tendered evidence. In his chief examination, he had only stated about his avocation, the injuries which he suffered owing to the accident on 25.12.2010, the treatment which he took and was undergoing and the compensation that he sought. He stated that at the time of filing, the proof affidavit in the year 2014, he was not able to go to any work. He stated that he was taking treatment as out patient. During his cross examination, he stated that he took treatment as an inpatient for one week in Government General Hospital. He also stated that the bones in his hip had been broken.

21. To substantiate the disability, if the records produced before the trial Court are examined, X-rays had been produced and CT Scan had been produced but the accompanying reports had not been produced indicating the nature of the fractures as found in the X-rays and the result of the CT Scan. Merely placing on record, the X-rays and the photographs of the CT Scan, cannot advance the case of the petitioner. For reasons best known, the accompanying reports have not been filed. In view of these facts, I hold it would be highly impossible on the part of this Court to interfere with the order of the Tribunal on the issue of disability. In the order, the Tribunal had also granted Rs.2,000/- per disability. I would rather not enter into any further discussion on that aspect and affirm that finding.

22. The Tribunal had also granted a sum of Rs.10,000/- towards transport charges, Rs.15,000/- towards extra nourishment, Rs.50,000/- towards pain and suffering and Rs.30,000/- towards loss of income. In view of the statement during the evidence that the claimant was not able to do any work even in the year 2014, I would increase the loss of income from Rs.30,000/- to Rs.50,000/-. Since the claimant had been in hospital, for considerable period of time and also had necessity to revisit the hospital and had stated in evidence that he is taking treatment even till date as an out patient, I would grant



compensation under the attender charges to a sum of Rs.5,000/-. The other heads cannot be interfered with since they have been properly addressed by the Tribunal.

23. In view of the same, the compensation now granted is as follows:-

(i)	Loss of income	:	Rs. 50,000/-
(ii)	Loss of pain and suffering	:	Rs. 50,000/-
(iii)	Extra nourishment	:	Rs. 15,000/-
(iv)	Transport Charges	:	Rs. 10,000/-
(v)	Attended charges	:	Rs. 5,000/-
(vi)	Disability 80%	:	Rs.1,60,000/-

Rs.2,90,000/-

This would mean that there has been an enhancement of Rs.25,000/- to the compensation already granted. The total compensation is at Rs.2,90,000/-.

24. In fine, the Appeal is allowed to the above extent. No costs. The award is modified. The compensation award is enhanced to Rs.25,000/-.

25. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

26. It is brought to the notice of this Court that the appeal was filed with a delay of 900 days. Naturally, interest cannot be mulcted on the respondent for the particular period of delay in filing the appeal. Therefore, while calculating interest, the interest for 900 days may be deducted and for the balance number of days or years, the interest may be granted to the appellant herein. Interest is to be granted at 7.5% Simple Interest.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg



To

1. The IV Additional District Judge,
Thiruvallur,
Ponneri.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.21841

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.21676

CMA No. 1931 of 2018

AK-II(CO)
SU(06/05/2022)