

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.180 of 2015

and

M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
Old No.2918, New No.238
Arcot Road, Jambubala Complex
1st Floor, Vellore ... Appellant

vs.

1.Sarayna

2.Munirathinam

3.Ravikumar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 25.03.2014, made in M.A.C.T.O.P.No.650 of 2013, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupathur.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.PA.Sudesh Kumar for R1

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J U D G M E N T

The appellant / third respondent has preferred the present appeal against the judgment and decree, dated 25.03.2014, made in M.A.C.T.O.P.No.650 of 2013, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupathur.

2. The short facts of the case are as follows:-

On 05.04.2010, at about 09.00 a.m., on Tirupattur-Vaniyampadi Main Road, near Fakkiri Takka Lorry shed, when the claimant was riding her TVS Scooty Motorcycle bearing registration No.TN23 AY9713, a bus bearing registration No.TN23 AF3040, which was driven by its driver in a rash and negligent manner, dashed behind the Scooty. As a result, the claimant had sustained multiple bone fracture injuries besides head injuries. Hence, the claimant had filed a claim petition

against the owner and the insurer of the offending vehicle for compensation.

3. The appellant / Insurance Company filed a counter affidavit and resisted the claim petition stating that the accident had not been committed by the driver of the bus, actually the claimant without noticing the bus, which was coming behind her, suddenly proceeded to the middle of the road and caused the said accident. As such, the entire negligent is on the side of the claimant. Further, the claimant's vehicle had not been covered by valid documents besides the claimant did not possess valid driving licence. Further, the appellant had denied the nature of injuries, mode of treatment and medical expenses.

4. On considering the averments of both sides, the Tribunal had framed two issues namely:

- i. Whether the accident had happened due to the rash and negligent driving of the bus bearing registration No.TN23 AF3040?
- ii. Whether the petitioner is entitled for compensation? If so what is the quantum? And who is liable to pay?

5. On the side of the claimant, three witnesses were examined and 34 documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. P.W.1, the claimant had adduced evidence stating that on 05.04.2010, at about 09.00 a.m., she was riding her TVS 50 Scooty bearing registration No.TN23 AY9713, on Tirupattur-Vaniyampadi Main Road observing all traffic rules. At that time, the bus bearing registration No.TN23 AF3040 driven by its driver in a rash and negligent manner and dashed against the Scooty from behind. As a result, she had sustained multiple bone fracture injuries besides head injuries. Further, she adduced evidence that she was rushed to Government Hospital at Tirupattur, wherein preliminary treatment was given. Thereafter, she had been taken to C.M.C.Hospital, Vellore, for further treatment. Further, she had undergone treatment at Miot Hospital and Apollo Hospital in Chennai. She had marked 34 documents in order to prove the nature of injuries, mode of treatment, period of treatment as inpatient as well as outpatient and medical expenses. Further, she adduced evidence that a criminal case has been registered against the driver of the offending bus.

7. P.W.2, who is the Ortho Specialist had adduced evidence that the claimant had sustained bone fracture injuries on her left arm, left elbow and left leg. The fractured bones malunited. He had examined the claimant and on scrutinizing the medical records, he certified that the claimant had sustained 35% disability.

8. P.W.3, who is Ophtalamologist had examined the claimant and verified the medical records, had certified that the claimant had sustained 40% disability and her left eye lost its vision power.

9. On recording the evidence of the witnesses and on perusing the exhibits marked by the claimant, the Tribunal had awarded a sum of Rs.17,50,000/- as compensation with interest at the rate of 7.5% per annum. Against the said Award and decree, the Insurance Company has filed the present appeal challenging the quantum of compensation.

10. The highly competent counsel Mr.S.Arun Kumar, submitted that the claimant had suddenly proceeded to the middle of the road without noticing the bus coming behind her in the same direction. In the said accident two vehicles had been involved and hence contributory negligence has to be fastened on both sides. The same was not considered by the Tribunal. The claimant had undergone treatment as an inpatient for about 15 days. The Ortho Doctor had certified that the claimant had sustained 35% disability, which is on the higher side. Likewise, the Ophtalamologist had certified that the claimant had sustained 40% disability, which is also on the higher side. Further, the Tribunal had adopted the multiplier method and awarded a compensation of Rs.11,85,600/-, which is inappropriate in the instant case. Furthermore, the Tribunal had awarded compensation under the head of humiliation and loss of expectation of life are also inappropriate. Hence, the learned counsel prays the Court to scale down the compensation.

11. The very competent counsel Mr.PA.Sudesh Kumar, appearing for the claimant, submitted that the claimant is a leading practicing lawyer in Tirupattur with both sides of practice being criminal and civil. She was earning Rs.35,000/- per month. The accident had been committed by the driver of the bus in a rash and negligent manner by dashing against the claimant. Hence, F.I.R., had been registered on the bus driver accordingly. The said bus had been insured by the Insurance Company. As such, the negligence and liability had been proved against the driver of the bus and the Insurance Company respectively. The claimant had totally lost her vision on her left eye, which is permanent in nature, besides she had sustained multiple bone fracture injuries and she had been treated at various multi speciality hospitals at Chennai, Vellore, Tirupattur. The claimant had spent more than Rs.2,00,000/- towards medical expense besides an addition medical bill of Rs.1,93,500/- towards physiotherapy treatment. As per the practicing Doctors opinion, further medical treatment is required for which compensation has not been granted.

12. The learned counsel for the claimant has further submitted that the claimant is aged about 46 years and now she

is unable to continue her practice as a successful lawyer. Therefore, the Tribunal had adopted the multiplier method and awarded compensation under the head of loss of income as per the principle laid down in Sarala Varma's case. Therefore, there is no shortcoming for assessing the compensation, which is found suitable for execution. Hence, the highly competent counsel prays to dismiss the above appeal.

13. Considering the factual situation of the case and on hearing the arguments of the highly competent counsels on either side and on perusing the typed set of papers, this Court is of the view that a criminal case had been levelled against the driver of the offending bus duly insured with the appellant Insurance Company, therefore the entire negligence and liability has been established against the driver of the bus and Insurance Company respectively. Further, the claimant was 46 years old at the time of accident and she is a leading practicing lawyer in both civil and criminal side and earning Rs.25,000/- per month. She lost the vision of her left eye permanently, besides she had sustained multiple bone fracture injuries on her left arm, left leg, besides skull injuries, which are all serious in nature. She had undergone her last medical treatment at various multi speciality hospitals. Therefore, the quantum of compensation granted by the Tribunal is most appreciable. However, the Tribunal had adopted the multiplier method, which is inappropriate, hence this Court restructures the same as follows:

i. Disability	: Rs. 2,25,000/-
ii. Pain and suffering	: Rs. 1,00,000/-
iii. Nutrition	: Rs. 25,000/-
iv. Attender charges	: Rs. 84,000/-
v. Transport Expenses	: Rs. 90,000/-
(Based on Ex.B25)	
vi. Medical Expenses	: Rs. 2,00,000/-
vii. Physiotherapy Treatment:	Rs. 1,93,500/-
(Based on Ex.B16)	
viii. Loss of earning during the period of treatment	: Rs. 1,50,000/-
ix. Disfigurement due to all injuries on the body especially the total damage of the left eye	: Rs. 3,00,000/-
x. Loss of amenities, which is debilitating on her future avocation	: Rs. 3,82,500/-

	Rs.17,50,000/-

Accordingly, the total award granted by the Tribunal is restructured as mentioned above is confirmed. The rate of

interest fixed by the Tribunal remains unchanged.

14. At the time of admission, this Court directed the appellant Insurance company to deposit a sum of Rs.10,00,000/- and subsequently this Court permitted the claimant to withdraw 50% of the deposited amount. Now, this Court directs the appellant Insurance Company to deposit the balance compensation after subtracting the earlier deposit, with accrued interest thereon, to the credit of M.A.C.T.O.P.No.650 of 2015, on the file of the Motor Accident Claims Tribunal / Special Sub Court, Tirupattur, within a period of six weeks from the date of receipt of a copy of this Judgment. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with interest after filing a memo with a copy of this Judgment, subtracting the earlier withdrawal if any.

15. In the result, this civil miscellaneous appeal is dismissed and the Judgment and Decree, dated 25.03.2014, made in M.A.C.T.O.P.No.650 of 2013, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupathur, is modified as stated above. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

krk

To
The Special Sub Judge,
Motor Accident Claims Tribunal,
Tirupattur.

+1 cc to M/s.S.Arunkumar, Advocate, sr.60001
+1 cc to PA Sudeshkumar, Advocate, sr.59334

C.M.A.No.180 of 2015
and
M.P.No.1 of 2015

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kra 06/11/2015