

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2472 of 2015 &
M.P.No.1 of 2015

The New India Assurance Company Limited,
No.66-C, North Car Street,
Tiruchengode. ...Appellant/2nd Respondent

Vs.

1.P.Asha ... Petitioner
2.P.S.Natarajan ... Respondents /1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set-aside the judgment and decree dated 03.03.2015 passed in M.C.O.P.No.12 of 2014, on the file of the Motor Accidents Claims Tribunal & Additional District Judge, Namakkal.

For Appellant : Mr.R.Neethi Perumal

For Respondents : Mr.M.A.P.Thangavel

J U D G M E N T

The short facts of the case are as follows:-

On 22.04.2013, at about 03.30 p.m., when the claimant was travelling as a passenger and standing on the back side of the bus bearing registration No.TN-34-Q-8205, the driver of the bus drove it in a rash and negligent manner and also in a zigzag manner and suddenly applied the brakes. As a result, the petitioner was thrown away from the back side foot board and fell down from the bus. Due to the accident, the petitioner sustained multiple grievous injuries and compound fractures on her head, both legs, both hands, chest and some other injuries all over the body. Hence, the petitioner has filed the claim against the owner and insurer of the bus.

2. The second respondent in his counter has submitted that the the petitioner had travelled in the bus by standing

near the foot board without holding the railing in the bus and suddenly lost control of herself and fell down and caused the accident. The second respondent further submits that the occurrence of the accident was due to the negligent act of the petitioner only. The averments regarding age, occupation, monthly income, injury sustained and medical expenditure incurred by the petitioner towards treatment were also denied.

3. After considering the averments of both parties, the Tribunal had framed two issues. On the side of the claimant two witnesses were examined and twelve documents were marked. On the side of the Insurance Company, no witness, no document.

4. The Tribunal after considering the evidence of the witnesses and on perusal of the documentary evidence awarded a sum of Rs.9,15,300/- as compensation with interest at the rate of 7.5% per annum.

5. Aggrieved by the award passed by the Tribunal, the second respondent / Insurance Company has filed the above appeal.

6. The learned counsel Mr.R.Neethi Perumal appearing for the appellant / Insurance Company submits that the learned Judge failed to note that the accident has occurred due to the negligent act of the claimant who was travelling on the foot board of the bus and hence, the injured alone was responsible for the accident. He further submits that the learned Judge in assessing the compensation for the victim failed to see that the victim also contributed to the accident and her negligence is apparent on the face of record. He further submits that the Tribunal without any sufficient reasons had adopted the multiplier method and granted compensation. He further submits that the Tribunal ought to have followed the percentage method in granting compensation and must have fixed the negligence on the part of the claimant also. The learned counsel further submits that the award granted by the Tribunal is highly excessive.

7. The learned counsel Mr.M.A.P.Thangavel appearing for the first respondent / claimant submits that the claimant had sustained multiple grievous injuries and compound fractures on her head, chest, legs and hands. He further submits that the claimant had spent nearly Rs.2,00,000/- towards medical and other expenses. Further, the claimant was aged about 27 years at the time of accident and was working as a candle manufacturer and earning Rs.7,000/- per month. Due to the above accident, she has lost her earning capacity and has become permanently disabled. The doctor had also certified that the claimant had sustained 65% disability. Hence, the award granted by the Tribunal by adopting multiplier method is appropriate. Hence, the learned counsel entreats this Court to dismiss the above

appeal.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that the multiplier method adopted by the Tribunal for assessing the loss of earning capacity is not appropriate in the instant case. Further, except for the award granted towards medical expenses, the other award granted under various heads are slightly on the lower side. Hence, this Court reassesses the compensation as follows:-

This Court grants Rs.1,30,000/- under the head of loss of earning capacity (65% x Rs.2000); Rs.1,97,306/- is awarded towards medical expenses; Rs.20,000/- is awarded towards transport; Rs.50,000/- is awarded towards pain and suffering; Rs.25,000/- is awarded towards nutrition; Rs.20,000/- is awarded for attender charges; Rs.7,694/- is awarded for loss of earning during medical treatment period; Rs.4,00,000/- is awarded towards loss of amenities and loss of comfort due to the multiple fracture injuries, loss of muscle and loss of skin sustained by the claimant. In total, this Court awards Rs.8,50,000/- as compensation. As such, this Court scales down the compensation from Rs.9,15,300/- to Rs.8,50,000/-. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation.

9. This Court directs the appellant / New India Assurance Company Limited to deposit the compensation amount along with interest, as fixed by this Court, after deducting earlier deposits made, within a period of six weeks from the date of receipt of a copy of this order. After such deposit is being made, it is open to the claimant, to withdraw the compensation amount along with interest, as fixed by this Court, after filing a Memo, along with a copy of this order.

10. In the result, the above appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

True Copy

Sub Assistant Registrar

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

C.M.A.No.2472 of 2015 &
M.P.No.1 of 2015

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