

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 608 of 2015

&

M.P. No. 1 of 2015

The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai 600 001.

... Appellant

Vs.

1.A. Ilayarasi
2.N. Loganathan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act of 1988 against the judgment and decree dated 25.07.2013 passed in M.C.O.P. No. 330 of 2011 by the Motor Accidents Claims Tribunal (Sub Court), Poonamallee.

For Appellant : Mr.R. Neethe Perumal

For Respondents : Mr.M. Sivakumar for
Mr.C. Prabakaran for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company challenging the fastening of liability on them to pay the compensation amount as well as the quantum of compensation awarded by the Tribunal to the tune of Rs. 4,10,777/- in favour of the 1st respondent for the injuries sustained by her in the accident, which occurred on 26.02.2011.

2. Heard Mr.R. Neethe Perumal, learned counsel for the appellant and Mr.M.Sivakumar, learned counsel for the 1st respondent.

3. Though Mr. R. Neethe Perumal, learned counsel for the appellant would contend that FIR was registered as against the 1st respondent, the complaint itself was lodged by the driver of the lorry and he cannot be expected to lodge a complaint against himself, even if he had been at fault. Besides, P.W.1, in her evidence has stated that the accident occurred only because of the rash and negligent driving by the driver of the lorry and no rebuttal evidence has been adduced by the appellant Insurance Company. Under such circumstances, the finding given by the Tribunal that the lorry driver alone was responsible for the accident cannot be found fault with and the same is confirmed.

4. The 1st respondent sustained severe degloving injury extending from mid $\frac{1}{2}$ right arm to the wrist exposing muscles of forearm. Moreover, distal pulses were also felt. The claimant had taken treatment as an inpatient at Sri Ramachandra Hospital, Porur, from 26.02.2011 to 30.03.2011 and again from 04.04.2011 to 05.04.2011. The Doctor, who examined the claimant, deposed that due to the accident, the claimant sustained injury on her right elbow and due to that, her wrist exposed muscles of forearm. Further, distal pulses were felt and surgery and POP were conducted. On account of the injuries sustained, the claimant could not do any work using her right hand. Based on medical records and on physical examination, P.W.2 assessed the disability sustained by the claimant as 35%. The said determination cannot be found fault with and same is confirmed.

5. Coming to the quantum of compensation, following the judgment of this Court rendered in The Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam Division, Trichy V. S.Kannappan reported in 2007 TN MAC Pg.1, a sum of Rs.70,000/- was awarded @ Rs.2000/- per percentage of disability, which is reasonable. The other amounts, namely, Rs.20,000/- towards "Pain and Suffering", Rs.5000/- towards "Transportation Expenses", Rs.5000/- towards "Extra Nourishment", Rs.1,40,785/- towards "Medical Expenses" on the basis of Ex-P6, Medical Bills, Rs.10,000/- awarded towards "Loss of Amenities" and Rs.10,000/- awarded towards compensation for disfiguration of hand are all reasonable and hence, they are confirmed.

6. The claimant was working as a Beautician and was said to be earning about Rs.11,916/- per month, as per Ex-P11, copy of pay slip. Considering the nature of injuries, the Tribunal was of the opinion that it would have taken 12 months for treating the injuries sustained by the claimant. The photographs produced before this Court by the learned counsel for the 1st respondent would also confirm the said position. Therefore, salary for 12 months, to the tune of

Rs.1,42,992/- was rightly awarded by the Tribunal and the award of Rs.4,10,777/- passed by the Tribunal cannot be found to be on the higher side and the same is confirmed. So also, the rate of interest awarded by the Tribunal at 7.5% per annum.

7. The appellant Insurance Company is directed to deposit the entire award amount, together with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the same within a period of one week thereafter.

8. In the result, the Civil Miscellaneous Appeal stands dismissed confirming the award passed by the Tribunal. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accidents Claims Tribunal (Sub Court),
Poonamallee.

+lcc to Mr.C.Prabhakaran, Advocate, S.R.No.19596
+lcc to Mr.R.Neethe Perumal, Advocate, S.R.No.19610

C.M.A. No. 608 of 2015

CNR(CO)
CA(03/06/2015)

WEB COPY