

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1394 of 2016

Mrs.R.Annapoorani

... Appellant/Petitioner

Vs.

1. Prema Sundararajoo
2. M/s.Cholamandalam M.S.General Insurance Company Ltd.,
Regional Office 2nd Floor
Wajeeha Corporate Clubs
No.1, Village Road
Chennai - 600 034 ... Respondents/Respondents
(R1 Exparte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 15.06.2012 and made in M.C.O.P.No.3005 of 2007 on the file of the III Judge, I/c. II Small Cause Court, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Ms.Harini
M/s.N.Vijayaraghavan
R1 : Exparte

JUDGMENT

Challenging the award of the Tribunal dated 15.06.2012, the claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of compensation.

2.The appellant, being the claimant, had moved the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai with a claim petition in M.C.O.P.No.3005 of 2007 claiming totally a sum of Rs.6,00,000/- for the injuries sustained by her in a Road Traffic Accident said to have been taken place on 23.05.2007 at about 08.30pm at Besant Nagar, opposite to Ashtalakshmi temple, Chennai involving a car bearing Registration No.TN-01-S-7770 belonging to the first respondent herein.

3. It is alleged that the appellant/claimant has been doing business in her shop located at Mahalakshmi Koil Street, opposite to Ashtalakshmi temple, Besant Nagar, Chennai. When the appellant was present in her shop on the above said date, a Mitsubishi Lancer Car bearing Registration No.TN01-S-7770 belonging to the first respondent driven by its driver in a rash and negligent manner, rammed her shop and as a result of which she had sustained fracture over her hip, injury over her head and multiple injuries on all over her body. The vehicle was insured with the second respondent Insurance Company.

4. The first respondent, being the owner, did not admit the accident and claimed that his car did not involve in any such accident, much less the accident which was said to have been taken place on 23.05.2007. According to the first respondent, her car bearing Registration No.TN-01-S-7770 was parked inside her flat and no one was authorized to take away the vehicle as she was in abroad at that point of time. The second respondent company has contended that the first respondent's car, at the material point of time, was driven by one Seethapathi and allowed the vehicle to hit against the claimant's shop. The second respondent has also claimed that the driver was also not having valid and effective Driving Licence to drive the class of vehicle and therefore, the second respondent Insurance Company has disowned their liability to indemnify the loss of the insured.

5. The claims Tribunal, while rejecting the stand taken by the respondents 1 and 2, had accepted the case of the claimant and concluded that the accident was taken place due to the rashness and negligence on the part of the driver of the vehicle. Further, the Tribunal had also found that the first respondent, being the owner of the vehicle, is liable to pay compensation to the claimant and that since the claimant is a third party, the second respondent was also directed to pay compensation to the claimant and recover the same from the owner of the vehicle at the later point of time.

6. It is relevant to note here that the petitioner was aged about 46 years at the time of occurrence and since she was running a fancy store by putting her shop in front of Ashtalakshmi temple at Besant Nagar, she earned a sum of Rs.7500/- per mensem. However, the Tribunal had found that she would have earned not less than Rs.4500/- per month. Accordingly, her monthly income was determined by the Tribunal at Rs.4500/-. According to the claimant she had been treated for about 21 days as an inpatient. In order to substantiate her claim, she had produced Exs.P2 to P4. Based on Exs.P2, P5, P6 and P7, the Tribunal had determined the medical expenses to the extent of Rs.94,820/- (rounded off to Rs.95,000/-).

7. PW2- Dr.K.J.Mathiazhagan, after examining the claimant clinically, had assessed her disability at 45% and found that it was partial and permanent in nature. He had also issued Ex.P11-Disability certificate to that effect. However, the Tribunal had reduced the disability to 40%, which is reasonable and at the rate of Rs.2000/- per percentage of disability, a sum of Rs.80,000/- was allowed under the head of partial and permanent disability. Towards the loss of monthly income, a sum of Rs.13,500/- was granted for three months. Further, the Tribunal had granted a sum of Rs.5000/- each towards transportation and extra nourishment and another sum of Rs.500/- was allowed towards damage to cloths. The Tribunal had also granted a sum of Rs.10,000/- under the head of pain and suffering. Totally, a sum of Rs.2,09,001/- was awarded as compensation as detailed below:

Loss of income for three months	:	Rs.13,500.00
Transportation	:	Rs. 5,000.00
Extra Nourishment	:	Rs. 6,000.00
Damage to cloths	:	Rs. 500.00
Medical Expenses	:	Rs.95,000.00
Pain and Suffering	:	Rs.10,000.00
Disability of 40% at the rate of Rs.2,000/- per disability	:	Rs.80,000.00

Total compensation is fixed at		Rs.2,09,000.00

8. Mr.T.T.G.Balachandran, learned counsel appearing for the appellant has argued that the Tribunal had committed a serious error while calculating the loss caused to the claimant and therefore he has urged that the compensation awarded by the Tribunal might be enhanced to an certain extent. He has further added that the appellant, prior to the accident, was hale and healthy and was doing business in selling fancy articles and thereby earned a sum of Rs.7500/- per month. He has also maintained that at least a sum of Rs.6,500/- might be fixed towards monthly earning of the petitioner and besides this, the Tribunal had also lost sight upon the medical bills and vouchers which were produced by the appellant under Exs.P2, P5, P6 and P7. He has further contended that since the appellant had undergone a surgery as she was suffered with a fracture over her hip and undergone treatment in various hospital, at least a sum of Rs.25,000/- might be granted towards pain and suffering. He has further adverted to that atleast a sum of Rs.3,00,000/- might be granted towards the compensation in consonance with the real loss suffered by the claimant.

9. Ms.Harini, learned counsel appearing on behalf of Mr.N.Vijayaraghavan, learned counsel on record for the second respondent, has submitted that the Tribunal, while granting the award, had taken into consideration all the aspects and only

thereafter, a sum of Rs.2,09,000/- was awarded, which did not require any modification or enhancement.

10. This Court has carefully perused the award of the Tribunal along with the materials placed before this Court and considered the submissions made on behalf of both sides. Having given due consideration, this Court finds that the award of the Tribunal is very low when comparing with the injuries suffered by the claimant including the fracture over her hip.

11. It is relevant to note here that the petitioner was aged about 46 years at the time of occurrence. She was running a fancy store in front of Ashtalakshmi temple, Besant Nagar and was earning a sum of Rs.7,500/- per mensem. Considering the location of the shop run by the claimant viz., Ashtalakshmi temple at Besant Nagar, this Court is of the view that she could have at least earned a sum of Rs.6500/- per mensem. Considering the nature of injuries suffered by the claimant, it could be presumed that she could not have attended the shop at least for a period of four months. Hence, a sum of Rs.26,000/- is awarded under the head of loss of earning (Rs.6500/-x4). The Tribunal has awarded only a sum of Rs.5,000/- each towards transportation charges and extranourishment. Considering the grievous nature of injuries and duration of treatment, this Court is of the view that the said amount is very meagre and a sum of Rs.10,000/- each could be awarded under the head of Transportation charges and extranourishment. The Tribunal has awarded a sum of Rs.95,000/- towards medical expenses. As this amount is in consonance with the medical bills, this could be maintained.

12. It is relevant to note here that the claimant had sustained fracture over her hip, besides head injuries and multiple injuries all over her body. Hence, a sum of Rs.10,000/- granted by the Tribunal under the head of pain and suffering is hereby increased to Rs.25,000/-. As per the evidence of PW2- Dr.K.J.Mathiazhagan, the petitioner was suffered with the disability to the extent of 45%. But, the Tribunal had fixed the disability at 40%. This Court is of view that as per the latest judicial pronouncements, a sum of Rs.3,000/- could be awarded per percentage of disability. Accordingly, a sum of Rs.1,20,000/- is hereby awarded under the head of disability. A sum of Rs.500/- awarded by the Tribunal under the head of damages to cloth could be maintained. As the claimant was treated as inpatient for 21 days, this Court is of the view that a sum of Rs.7000/- could be awarded towards attendant charges. On a cursory perusal of the award, it is seen that the Tribunal had not awarded any amount towards loss of amenities. Hence a sum of Rs.7500/- is awarded under the head of loss of amenities. Accordingly, the award of Rs.2,09,000/- granted by the Tribunal is hereby enhanced to Rs.3,00,000/- as under:

Loss of earning capacity :	Rs. 26,000.00
(Rs.6,500\ - *4)	
Transportation :	Rs. 10,000.00
Extra nourishment :	Rs. 10,000.00
Medical Expenses :	Rs. 95,000.00
Damages to Cloth :	500.00
Pain and Suffering :	Rs. 25,000.00
Disability :	Rs.1,20,000.00
(40% *Rs.3000)	
Attendant Charges :	Rs. 6,000.00
Loss of amenities :	Rs. 7,500.00

Rs.3,00,000.00

In the result, this civil miscellaneous appeal is allowed and the award of Rs.2,09,000/- granted by the Tribunal is hereby enhanced to Rs.3,00,000/-. The first respondent, being the owner of the vehicle, is vicariously liable to pay this amount. As rightly observed by the Tribunal, since the appellant is a third party, she is entitled to get the award amount and therefore, the second respondent is directed to pay the above said amount with interest at the rate of 7.5% per annum from the date of petition along with cost, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. The second respondent is at liberty to recover this amount from the first respondent by way of execution proceedings without actually a filing a suit for recovery of money at a later point of time. On such deposit being made, the appellant is entitled to withdraw the entire amount along with the accrued interest and cost without actually filing any formal application seeking permission. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. III Judge,
I/c. II Small Cause Court
Chennai.
2. The Section Officer, V.R. Section, High Court Madras
+1 CC to Mr. N. Vijayaraghavan, Advocate sr 46303
+1 CC to Mr. T.G. Balachandran, Advocate sr 46215

C.M.A.No.1394 of 2016

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