

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.3405 of 2012

Gracelyn Davidson ... Appellant/Petitioner

Vs.

1. KPN Travels India Ltd.,
20/1, Swamy Complex, A.V. Road,
Kalasipalayam, Bangalore District,
Bangalore,
Karnataka - 560 001.
2. A. Jaya
3. The National Insurance Company Ltd.,
Branch - 1, 33, Promenade Road,
Cantonment, Trichy - 1.
Policy No.650801/31/03/6305975
4. The New India Assurance Company Ltd,
Policy No.711 802/31/4/00247
III Party Claim Office, Anna Salai,
Chennai. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.08.2008 made in MACTOP.No.4295 of 2005 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.R.Rajmohan
For 3rd Respondent : Mrs.N.B.Surekha
For 4th Respondent : Mr.M.Krishnamoorthy

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Heard the learned counsel for the appellant and the learned counsel appearing for the 3rd and 4th respondents.

2. Aggrieved by the award dated 06.08.2008 passed by the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai in O.P.No.4295 of 2005, the injured claimant has come up with the present appeal seeking enhancement of compensation.

3. In the claim petition filed before the Tribunal, the claimant, Ms.Gracelyn Davidson averred that on 23.06.2004, about 6.00 a.m., when she was returning to Chennai from Bangalore in a KPN Travels Bus, bearing Registration No.KA 38-A 0001, after attending an interview in IBM International Technology Park, Bangalore, the said bus collided with a Lorry bearing Registration No.MDA 6069 near Penoor Power Grid, Sriperumbudur, as a result of which, paints, varnish and chemicals in the bus spilled out, and the bus was completely burnt; consequently, the drivers of both the Bus and the Lorry and some passengers died. The claimant, who is one among the injured, sustained grievous injuries over her face and other parts of her body. In this regard, a case was registered in Sriperumbudur Police Station in Crime No.299 of 2004. Alleging that the accident occurred due to the rash and negligent driving of both the drivers of KPN Travels Bus and the Lorry, the claimant impleaded the owner of the KPN Travels Bus bearing Registration No.KA 38-A 0001 and its Insurer, as the 1st and 3rd respondents and the owner and Insurer of the Lorry bearing Registration No.MDA 6069 as 2nd and 4th respondents and claimed a sum of Rs.25,00,000/- as compensation for the injuries sustained.

4. Respondents 1 to 3 remained exparte before the Tribunal and no counter was filed on their behalf. Denying the averments of the claimant, the 4th respondent, who is the insurer of the Lorry filed a counter affidavit.

5. On the side of the appellant/claimant, the claimant herself was examined as P.W.1 and Dr.J.R.R.Thiagarajan, who issued the Disability Certificate was examined as P.W.2 and Exs.P1 to P9 are marked, the details of which are as follows:

Ex.P-1	Copy of FIR
Ex.P-2	Treatment record and injury report
Ex.P-3	Discharge Summary
Ex.P-4	Discharge Summary
Ex.P-5	Discharge Summary
Ex.P-6	Medical Bills
Ex.P-7	X-ray
Ex.P-8	Photos with negative
Ex.P-9	Disability Certificate

6. On the side of the 4th respondent/Insurance Company, one Mr.E.S.Venkatesan, Investigator of the 4th respondent Insurance Company was examined as R.W.1 and Investigation Report was marked as Ex.R-1.

7. On consideration of the oral and documentary evidence, the Tribunal, holding that the accident occurred due to the rash and negligent driving of the drivers of both the Omni Bus and the Lorry, fixed the liability to pay compensation to the claimant equally on all the respondents, i.e. the owner and Insurer of the Bus as also the Lorry and awarded a sum of Rs.9,85,070/- as compensation to the claimant along with interest at the rate of 7.5% p.a. The break-up details of the award are as follows:

60% partial permanent disability	Rs. 60,000/-
Pain and suffering	Rs. 50,000/-
Transportation to Hospital	Rs. 5,000/-
Extra nourishment	Rs. 10,000/-
Damages to dress	Rs. 2,000/-
Medical Expenses	Rs. 7,58,070/-
Marital prospects	Rs. 1,00,000/-
Total compensation	Rs. 9,85,070/-

Being dissatisfied with the amount of compensation awarded by the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

8. Learned counsel for the appellant/claimant strenuously contended that the Tribunal has awarded less compensation as against the claim of the appellant/claimant, without considering her non-employment, loss of appearance and the mental agony undergone by her.

9. According to the learned counsel appearing for the 4th respondent/Insurance Company, the compensation awarded by the Tribunal is not on the lower side and hence, prayed for dismissal of the appeal.

10. We have given careful consideration to the submissions made by the learned counsel on either side and gone through the materials available on record. The appellant herein is one among the injured in the alleged accident. At the time of accident, she was 23 years old and had been searching for a job. Admittedly, the

alleged accident has shattered her future.

11. A perusal of the Discharge Summaries of the appellant/claimant, vide Exs.P3, P4 and P5 would show that immediately after the accident, the appellant/claimant took first aid treatment in Jaya Hospital and thereafter, she was an inpatient in Apollo Hospital for 44 days. She underwent surgeries on 02.07.2004, 05.07.2004, 23.07.2004, 07.09.2004 and 22.10.2004. In all, she had been in Hospital for 52 days. Though P.W.2, Doctor had issued Disability Certificate fixing the appellant/claimant's disability at 70%, the Tribunal reduced the percentage of partial and permanent disability sustained by the appellant/claimant at 60% and awarded a sum of Rs.60,000/-.

12. Since the appellant/claimant was searching for a job at the time of accident, it cannot be said that there is no loss of earning. Had she not met with such an accident resulting in burn injuries, she would have certainly been in a good job now. Further, the Tribunal has awarded only a sum of Rs.50,000/- towards pain and suffering. Any injured accident victim with an amputation or fracture or burn injury would certainly experience pain and suffering. Burn injuries and their subsequent treatment cause one of the most excruciating forms of pain imaginable. Hence, this Court is of the view that the compensation awarded by the Tribunal under the heads 'partial permanent disability' and 'Pain and Suffering' need to be enhanced and accordingly, the compensation towards 60% partial permanent disability is enhanced to a sum of Rs.1,80,000/- and the compensation towards Pain and Suffering is enhanced to a sum of Rs.75,000/-, as the appellant/claimant had been in hospital for 52 days.

13. As regards compensation of a sum of Rs.5,000/- awarded under the head 'Transportation' is concerned, this Court feels that it is on the lower side, taking into account the number of days the appellant/claimant had been hospitalised. Hence, the compensation towards 'Transportation' is enhanced to a sum of Rs.15,000/-. As far as the compensation of a sum of Rs.10,000/- awarded under the head 'Extra Nourishment' is concerned, this Court feels it appropriate to enhance the same to a sum of Rs.20,000/- taking into account the burn injuries sustained by the appellant/claimant, and it is accordingly enhanced.

14. Further, the compensation of a sum of Rs.2,000/- awarded towards 'Damages to dress'; a sum of Rs.7,58,070/- awarded towards 'Medical Expenses' and a sum of Rs.1,00,000/- awarded towards 'Marital Prospects' is confirmed and it requires no interference.

15. In fine, the compensation awarded by the Tribunal under various heads is modified and enhanced to a sum of Rs.11,50,070/- (Rupees Eleven Lakhs Fifty Thousand and Seventy only) and the break-up details of the revised award, are as under:

Compensation under the Head	Compensation awarded by the Tribunal	Compensation modified by this Court
60% partial permanent disability	Rs. 60,000/-	Rs.1,80,000/-
Pain and suffering	Rs. 50,000/-	Rs. 75,000/-
Transportation to Hospital	Rs. 5,000/-	Rs. 15,000/-
Extra nourishment	Rs. 10,000/-	Rs. 20,000/-
Damages to dress	Rs. 2,000/-	Rs. 2,000/-
Medical Expenses	Rs. 7,58,070/-	Rs.7,58,070/-
Marital prospects	Rs. 1,00,000/-	Rs.1,00,000/-
Total compensation	Rs. 9,85,070/-	Rs.11,50,070/-

*"16. It is made clear that the 3rd respondent National Insurance Company is directed to deposit if not already deposited the entire compensation awarded by the Tribunal including the enhanced compensation awarded by this Court, in toto, a sum of Rs.11,50,070/- along with accrued interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.4295 of 2005 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of six weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is permitted to withdraw the entire amount with accrued interest at 7.5% from the date of filing the petition till the date of realization.

With the above modification and direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS VI)

Dated: 2.3.2016

*Corrected as per the order of this court dated 11.04.2016 and made in C.M.A.No.3405 of 2012.

Sd/

Assistant Registrar

Dated: 31.5.2016

//True Copy//

Sub Assistant Registrar

aeb

To :

The Motor Accidents Claims Tribunal,
II Judge, Court of Small Causes, Chennai.

To be substituted
to the order
already despatched
on 30.3.2016

+1cc to Mr.R. Raj Mohan, Advocate, S.R.No.22990

+1cc to M/s. N.B. Surekha, Advocate, S.R.No.22635

UG(CO)

EU(15/03/2016)

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C.M.A.No.3405 of 2012