

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.09.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.2742 of 2017

Neelavathy

... Appellant/Petitioner

Versus

1. Ayuyavoo
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Erode. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order of Motor Accident Claims Tribunal of Dharapuram (Fast Track Court No.3), Additional District Judge, Dharapuram Erode District made in M.C.O.P. No.359 of 1998, dated 19.02.2002.

For Appellant : Mr.S.Saravanan

For Respondents: Mr.R.T.Sundari for R2

JUDGMENT

The claimant, Neelavathy, aged 30 years, an agriculturist, earning a sum of Rs.4000/- per month, met with an accident on 12.01.98. She filed the claim petition before the Motor Accident Claims Tribunal, Subordinate Judge of Dharapuram in OP No.359 of 1998, claiming a sum of Rs.3,00,000/-.

2. The Tribunal, on consideration of oral and documentary evidence, passed an award for Rs.19,000/- as compensation under the following heads:-

Pain and sufferings	: Rs.5,000/-
Medical expenditure	: Rs.5,000/-
Transport Expenses	: Rs.1,000/-
Extra Nourishment	: Rs.3,000/-
For the injuries i.e. Head injury	: Rs.5,000/-

Total Rs.19,000/-

Out of Rs.19,000/-, as quantified by the Tribunal, a sum of Rs.8,500/- (50%) towards contributory negligence has been deducted. The tort-feasor has been ordered to pay a sum of Rs.8,500/- to the claimant.

3. Challenging the finding on contributory negligence, and consequent deduction of 50%, and seeking enhancement of the compensation, the claimant has filed this appeal.

4. Learned counsel appearing for the appellant/claimant contended that though medical bills under Ex.A-3 have been placed on evidence before the Tribunal, however, the Tribunal has discarded the same on the ground that they are not stamped documents. It is submitted that the accident having been accepted and the claimant having sustained injuries in the said accident not disputed, the Tribunal ought to have awarded the medical expenses.

5. To verify the same, this Court called for the records and on perusal of the records, it is evident that while some of the documents are stamped, some of them are not stamped. The series of documents consists of prescription, bills and receipt for having purchased medicines. It also contains the trip sheet for transport. Availability of stamp on the bills will not alter the evidentiary value of the documents as in civil cases. The proper procedure may be that stamping is required, but non-stamping will not mean that the documents are spurious or false documents. The documents have to be looked into in toto to decide the value of the said documents. A perusal of the documents reveals that by and large, the bills relate to the medical expenditure incurred for the period of treatment from 12.01.98 to 27.01.98 for a sum of Rs.62,146/- and for the period from 02.08.1998 to 14.09.98 for a sum of Rs.29,735/-. The total amount of bills comes to Rs.1,03,010/-. Further, the record reveals that the claimant was admitted in the hospital as is revealed from the wound certificate issued by Sri Ramakrishna Hospital, Coimbatore. In such circumstances, the accident and the injuries suffered consequent thereto having been accepted, the Tribunal was not correct in not awarding the medical expenses which is supported by bills. The Tribunal has sought for proof beyond all reasonable doubt and that is not the standard of proof that is expected in an enquiry under the claim compensation procedure as contemplated under the Motor Vehicles Act. Accordingly, this Court awards a sum of Rs.1,03,010/= under the head medical expenses.

6. Learned counsel for the appellant/claimant further contended that on the basis of the grievous injuries sustained, the disability has been assessed at 25%. However, the Tribunal has not adopted multiplier method for quantification of compensation, but has awarded only a sum of Rs.5,000/- for the grievous injuries, which are three in number. It is therefore submitted that the said compensation requires enhancement.

7. In order to appreciate the above contention, it is necessary to find out the nature of injuries sustained by the claimant. The wound certificate issued by Sri Ramakrishna Hospital, Coimbatore reveals that the claimant was admitted on 12.01.98 and discharged on 29.01.98 and that she was attended on by a Neuro Surgeon as well as by an Orthopedician. The wound certificate further reveals the three injuries suffered by the claimant and for better appreciation of the contention, the same

is extracted hereunder :-

- (1) Head Injury - with thin subdural Haematoma (small blood clot in the head)
- (2) Fracture Right Temporal bone
- (3) Fracture in the right frontal bone
- (4) Left pneumothorax with post traumatic emphysema (Damage to left lungs filled with air)

8. The wound certificate revealing the injuries sustained by the claimant for which treatment was given during the above period was produced before the Tribunal, however, the Tribunal disbelieved the injuries sustained observing that the surgery could have been performed even prior to the accident for curing Tuberculosis and, therefore, the Tribunal did not award adequate compensation, but only awarded a sum of Rs.5,000/-.

9. This Court on an appreciation of the entire materials available on record, is unable to fathom the reason which made the Tribunal to pass such an observation and reject awarding of compensation for the said injuries. It is to be pointed out that the medical receipt and medical bills produced before this Court reveals that an operation has been performed on 04.08.1998 for which payment has been made. The above clearly shows that surgery was performed after the accident. In such circumstances, the observation of the Tribunal that the surgery could not have been done on an earlier occasion is without any material and, therefore, the said finding is liable to be set aside.

10. Once the finding with regard to surgery performed is set aside, the consequence thereof is that this Court has to consider awarding compensation for the disablement suffered by the claimant. The doctor has assessed the disability at 25%. This Court, on the basis of the available medical evidence concurs with the assessment of disability made by the doctor and accordingly fixes the disablement at 25%. Though the claimant has claimed that she was earning a sum of Rs.4,000/= per month, however, in the absence of any documentary evidence to prove the income, this Court, keeping in mind the fact that the accident happened in the year 1998, fixes a sum of Rs.2,000/- as the monthly income and adopting multiplier of 16, quantifies the compensation towards loss of earning capacity at Rs.96,000/- (Rs.2,000 X 12 X 16 X 25%).

11. On an overall consideration of the injuries sustained by the claimant, the period of treatment undergone and the impact of the injuries on the day-to-day activities of the claimant, this Court awards a sum of Rs.5,000/- towards extra nourishment; Rs.5,000/- towards cost of attendant, Rs.10,000/- towards pain and sufferings and Rs.15,000/- towards loss of enjoyment of amenities. Thus, the amount of compensation is quantified at

Rs.2,34,010/-.

12. The next contention of the learned counsel for the Transport Corporation is that it is an admitted fact that the claimant got into wrong bus and as such, she wanted the Driver of the vehicle to stop and before the bus could stop to let her get down, she tried to get down from the moving vehicle and in that process she sustained injuries and, therefore, the claimant has also equally contributed for the accident.

13. It is evident from the records that the claimant boarded the wrong bus and she tried to alight from the same before the bus could stop to let her down. However, as contended by the learned counsel for the Transport Corporation, though the claimant has contributed a part to the injuries she has sustained in the accident, however, the contribution cannot be fixed by more than 10%. Therefore, this Court fixes the contribution of the claimant for the accident at 10% and, therefore, proportionately the compensation requires to be scaled down.

14. Accordingly, this Court fixes the compensation under the following heads at Rs.2,34,010/= and deducting 10% from the total compensation towards contributory negligence, quantifies the compensation in a sum of Rs.2,10,609/= which will carry interest at 7.5% p.a. from the date of petition till date of deposit.

Sl. No.	Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
1	Pain and sufferings	Rs.5,000/-	Rs.10,000/-
2	Medical expenditure	Rs.5,000/-	Rs.1,03,010/-
3	Transport Expenses	Rs.1,000/-	
4	Extra Nourishment	Rs.3,000/-	Rs.5,000/-
5	For the injuries i.e. Head injury	Rs.5,000/-	-
6	Loss of earning capacity	-	Rs.96,000/- (Rs.2000/- x 12 x 16 x 25%)
7	Loss of enjoyment amenities	-	Rs.15,000/-
8	Cost of Attendant	-	Rs.5,000/-
	Total	Rs.19,000/-	Rs.2,34,010/-
	LESS : Contributory negligence @ 10%		Rs.23,401/-

			Rs.2,10,609/- (Rounded off to Rs.2,10,600/-)
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15. For the reasons aforesaid, this civil miscellaneous appeal is allowed in the above terms. No costs.

16. The 2nd respondent/Transport Corporation is directed to deposit the enhanced compensation ordered by this Court above along with interest at 7.5% p.a. from the date of petition till date of deposit to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. Court fee, if any, due on the enhanced amount, shall be paid by the claimant before obtaining copy of the Judgment.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi2/GLN

To

1. Motor Accident Claims Tribunal
(Fast Track Court No.3)
Additional District Judge, Dharapuram
Erode District.

2. The Section Officer
V.R. Section
High Court
Madras - 104.

+1cc to M/s.S.Saravnan, Advocate Sr.No.68700

KJ(CO)
sm:20.4.2018

C.M.A.No.2742 of 2017