

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.669 of 2007

and

M.P. No.1 of 2007

The Medical Officer,
Government Hospital,
Panrutti.

... Appellant/Respondent

Vs.

K.Srimathi

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgement dated 03.04.2002 made in MCOP.No.904/2001 on the file of the Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.M.Venugopal
Special Government Pleader

For Respondent : Mr.N.Damodharan

JUDGMENT

The appellant herein is the Government Medical Officer who preferred the appeal against the Judgement and Decree passed in MCOP.No.904/2001 on the file of the Additional Subordinate Judge, Cuddalore.

Brief facts of the case are as follows:

2. On 30.05.2001 at about 11.30 P.M. while the respondent was travelling in the vehicle belongs to the appellant, bearing Registration No.TN31G210, from panruti to Cuddalore at Thirukandeswram, the appellant's driver drove the vehicle in a rash and negligent manner, at a very high speed, without following the traffic rules and regulations and hit behind a Tyre cart and caused the accident.

3. Due to the accident, the respondent sustained grievous injuries and multiple fractures all over the body and head. The respondent was immediately taken to the Government hospital, Cuddalore for treatment and also treated at private hospitals

for long time. The accident was only due to the rash and negligent act of the driver of the appellant's vehicle bearing Registration No.TN 31G210.

4. The respondent was hale and healthy at the time of accident and she was only 30 years old and earning a sum of Rs.6,500/- per month as Cloth and Garment Merchant. She was the only bread winner of her family. Due to the accident she became permanently disabled and she is not able to work and earn as she was. So the entire family is suffering for their livelihood. She has spent more money for her treatment.

5. So the petitioner estimates Rs.5,00,000/- (Rupees five lakhs) as total loss for her permanent disability, pain and sufferings; shock and mental agony, loss of income, loss of earning power and capacity; loss of valuables and for the medical and other incidental expenditure arise out of the accident and claims as way of compensation.

6. The Tribunal has awarded a sum of Rs.2,04,360/- and the break up details are as under :-

Permanent Disability and Loss of Income :	Rs.1,71,360/-
For Grievous injuries :	25,000/-
Pain and sufferings :	5,000/-
For nutritious food :	3,000/-

Total	Rs.2,04,360/-

7. Among the grounds of the appeal, the main grounds raised are on negligence and quantum. Regarding the ground i.e., negligence on the respondent is concerned has not been proved by the appellant before the tribunal.

8. With regard to quantum is concerned, the doctor has issued disability certificate stating that the claimant has sustained 40% disability due to the fracture of humerus bone and the Tribunal has considered the same 40% disability and awarded as such, which is not excessive.

9. The arguments placed by the appellant before this Court is that PW2 is not a qualified person and the assessment by the medical officer on the claimant as 40% is highly excessive.

10. Nothing has been placed before the Tribunal regarding the qualification of the Medical Officer who issued the disability certificate for the claimant. Further, it is also the argument of the appellant that the Tribunal has assessed the occupation and income of the injured person without any documents and proof.

11. On considering the evidence and documents before the Tribunal, it is verified that the injured claimant is 30 years old and it is stated that she was doing cloth business (cloth and garment merchant) earning a sum of Rs.6000/- per month. In the absence of any proof of doing cloth selling business and documents for income at Rs.6,000/- , the Tribunal has taken it as Rs.2100/- as monthly income and determined the loss of income by fixing the proper multiplier is appropriate. So the amount taken for consideration by the Tribunal at the rate of Rs.2100/- per month is a reasonable one. Further the amount awarded under various heads are not excessive.

12. Hence, the award passed by the Tribunal, need not be interfered with.

13. In the result, this CMA is dismissed by confirming the Judgment and decree passed by the Additional Subordinate Judge, Cuddalore in MCOP No.904 of 2001, dated 03.04.2002. Consequently, connected miscellaneous petition is closed. No costs.

14. The appellant is directed to deposit the entire award amount along with accrued interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.904 of 2001 on the file of the Motor Accident Claims Tribunal, Cuddalore, within a period of four weeks from the date of receipt of a copy of this Judgment. 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.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

vum

To

1. The Additional Subordinate Judge,
Cuddalore.

+1 CC to Spl. Govt. Pleader(CS) sr 91177.

C.M.A.No.669 of 2007

SP(26/07/2018)