

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2017

CORAM

THE HONOURABLE Dr. JUSTICE. S.VIMALA

C.M.A.Nos.474 and 481 of 2017

C.M.A.No.474 of 2017

M/s.National Insurance Co. Ltd.,
Pondicherry. ... Appellant / 2nd respondent

versus

1.K.Sarojini ... 1st respondent/Petitioner
2.2. J.Subbiah ... 2nd respondent/1st respondent

(R2 remained ex parte
before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 30.09.2005 made in O.P.No.399 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Cuddalore

C.M.A.No.481 of 2017

M/s.National Insurance Co. Ltd.,
Pondicherry. ... Appellant / 2nd respondent

versus

1. K.Sankari ... 1st respondent/Petitioner
2. J.Subbiah ... 2nd respondent/1st respondent

(R2 remained ex parte
before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 30.09.2005 made in O.P.No.396 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Cuddalore

For Appellants : Mr.R.Ravichandran

COMMON JUDGMENT

The claimant Selvi, aged about 21 years, a student, met with an accident on 08.04.2000 and sustained injuries. Hence, she filed a claim petition M.C.O.P.No.396 of 2003 before the Motor Accident Claims Tribunal (Additional District Judge), Cuddalore, claiming a sum of Rs.10,00,000/-.

2. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.2,13,000/- as compensation, the break-up details of which are as under:

Disability	-	Rs. 13,000/-
Loss of earning capacity	-	Rs.1,95,000/-
Pain and suffering	-	Rs. 5,000/-

Total	-	Rs.2,13,000/-

3. In the same accident, one Sarojini, aged about 43 years, house wife, also sustained injuries and hence, she filed a claim petition in M.C.O.P.No.399 of 2003 before the Motor Accident Claims Tribunal (Additional District Judge), Cuddalore, claiming a sum of Rs.10,00,000/-.

4. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.1,80,000/- as compensation, the break-up details of which are as under:

Disability	-	Rs. 10,000/-
Loss of earning capacity	-	Rs.1,65,000/-
Pain and suffering	-	Rs. 5,000/-

Total	-	Rs.1,80,000/-

5. Challenging the quantum of compensation awarded by the claims Tribunal in both the claim petitions as excessive, the Insurance Company has filed these appeals.

6. It is the main contention of the learned counsel appearing for the appellant in both the appeals that the compensation awarded by the Tribunal is very excessive and disproportionate to the injuries sustained by the claimants. Hence, the compensation awarded in both the claim petitions have to be reduced. Though other contentions have been raised in the grounds, however, at the time of argument, the learned counsel for the appellant restricted his contentions only with regard to the excessiveness of the compensation.

7. A perusal of the award passed in both the claim petitions reveal that the claimants examined themselves as P.W.1

and P.W.2. The Doctor was examined as P.W.3 and the Doctor had filed a sworn affidavit, wherein, it was stated that the claimant in M.C.O.P.No.396 of 2003 suffered severe chest pain and she finds difficulty in breathing and there is fracture of bone over the right leg and the bone was found to be mal united. Hence, the doctor had assessed the disability at 30%. In respect of M.C.O.P.No.399 of 2003, the claimant stated that she sustained fracture of bone over left hip and left thigh. But, the Doctor in his sworn affidavit, stated that the claimant suffered severe back pain and there is a restriction in movement of back bones. Therefore, the Doctor had assessed the disability at 25%. However, the Tribunal, considering the nature of injury, has fixed the disability at 25% and 20% respectively and awarded disablement compensation only a sum Rs.13,000/- and Rs.10,000/- respectively.

8. In M.C.O.P.No.396 of 2003, it was claimed that the claimant was a student and she was aged 21 years at the time of accident. As the claimant was studying 2nd year at the time of accident and there being no proof of income apart from education, the Tribunal has fixed the monthly income of the claimant at Rs.1,250/-. The claimant was aged 21 years at the time of accident. However, the Tribunal, based on the decision of this Court reported in 2005 (1) TN MAC 87 (DB), adopted the multiplier of 13 and awarded compensation of Rs.1,95,000/- (Rs.1,250 x 12 x 13).

9. In respect of M.C.O.P.No.399 of 2003, the Tribunal, considering the fact that the claimant is a house wife and due to the injuries sustained, she cannot do the work as before, has fixed the income of the claimant at Rs.1,250/-. Considering the age of the claimant at 49 years, the Tribunal, applying the same ratio laid down in decision of this Court above, has adopted the multiplier of 11 and awarded the compensation of Rs.1,65,000/- (Rs.1,250 x 12 x 11).

10. The Tribunal has also awarded a sum of Rs.5,000/- towards pain and suffering to each of the claimants.

11. Considering the nature of injuries sustained by the claimants, period of treatment and the impact of the injuries on the earning capacity and the future life of the claimants and in their discharge of their day-to-day work, this Court is of the view that the Tribunal after considering the oral and documentary evidence, has awarded the compensation to the claimants, which cannot be said to be excessive.

12. It is to be stated that the Tribunal has not awarded any compensation towards extra nourishment, transport expenses, medical expenses and loss of amenities to the claimants.

However, considering that the accident had taken place long back during 2005, the compensation requires no enhancement. If any enhancement is granted, that would only make the award excessive. Therefore, no interference is warranted with the award passed by the Tribunal.

13. There being no merits, both the appeals are liable to be dismissed and, accordingly, the Civil Miscellaneous Appeals are dismissed, confirming the award dated 30.09.2005 made in O.P.Nos.396 and 399 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Cuddalore. No costs.

14. The Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal in both the claim petitions, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the respective claim petitions, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the respective claimants through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal,
(Additional District Judge),
Cuddalore

Copy TO

The Section Officer,
VR Section, High Court,
Madras.

C.M.A.Nos.474 and 481 of 2017

RJ(CO)
GN(26/03/2018)