

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.129 of 2018
and CMP.No.1710 of 2018

The Oriental Insurance Company Ltd.,
Siva Complex 2nd floor
No.22-C, Saradha College Main Road
Salem-636 016 ...Appellant/2nd respondent

vs

1.R.Devika ...1st respondent/Petitioner

2.N.Rajesh ...2nd respondent/1st respondent.

Civil Miscellaneous Appeal filed against the judgment and decree dated 30.06.2017 made in M.C.O.P.No.3555 of 2010 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : : Mr.D.Bhaskaran
For Respondents : :
for R1 : : Mr.S.Angamuthu
(Caveat Petition filed)

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the 2nd respondent before the Tribunal/Insurance Company, challenging the judgment and decree dated 30.06.2017 made in M.C.O.P.No.3555 of 2010 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai. With the consent of learned counsel appearing for both sides, the main appeal itself is taken up for final disposal at the stage of admission.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 01.02.2010, at about 11.30 p.m., when the petitioner was travelling in the 1st respondent bus bearing Reg.No.PY01-AK-9199, from Kodaikanal to Chennai, near Allampatti Pudhur, as the bus was going in high speed, driven in a rash and negligent manner, dashed against the lorry bearing Reg.No.TAR-2521 and the accident occurred only due to negligence of the 1st respondent bus driver. In the accident,

the petitioner suffered bone fracture in her right leg. At the time of the accident, the petitioner was a house wife and her monthly income was Rs.15,000/- and she was aged 45 years. Due to the injury suffered by her, she could not attend to her work as she used to. Hence, the petitioner claimed a sum of Rs.5,20,000/- which is restricted to Rs.4,00,000/- as compensation for the injuries sustained in the road accident.

3. On the other hand, opposing the petition, by filing counter, the 2nd respondent-Insurance Company contended that the genuineness and the manner of the accident is to be proved by the Petitioner. The complaint regarding the accident was lodged by the driver of the vehicle TAR-2521 to escape liability on their side. The Petitioner has to explain the nature of injuries suffered by her and also her avocation and income. Thus, the 2nd respondent seeks dismissal of the Petition.

4. Before the Tribunal, the petitioner examined herself as P.W.1 and the medical expert as P.W.2 and produced documents Ex.P.1 to Ex.P.11 to prove her claim. On the respondent side, no oral or documentary evidence was let in. The Tribunal, after analysing the entire evidence before it, held that the bus driver was driving the bus in a very rash and negligent manner, endangering the public safety and caused the accident; therefore, as an insurer of the 1st respondent Private Bus, the 2nd respondent is liable to pay the compensation to the petitioner. The Tribunal partly allowed the petition and awarded Rs.3,29,200/- as compensation to the petitioner. Aggrieved over the said conclusion of the Tribunal, the 2nd respondent-Insurance Company has come forward with the present appeal.

5. The learned counsel for the appellant-Insurance Company contends that the Tribunal has erred in granting huge sum of Rs.3,29,200/- as compensation for the injuries sustained by the Petitioner. P.W.2 doctor who issued permanent disability certificate has not treated the petitioner for her injuries. The Tribunal failed to note that the petitioner in her claim petition pleaded that she is a house wife, whereas, deposed that she was doing tailoring job and thereby, the Tribunal has erred in equating the alleged physical disability with earning capacity. The Tribunal failed to act in accordance with the Ruling of the Apex court reported in 210(2) TN MAC 581 (SC) wherein it is held that the Tribunal should not mechanically apply the multiplier method of calculation. Hence, the learned counsel sought to allow the appeal.

6. Per contra, the learned counsel for the 1st respondent/petitioner submits that the award passed by the Tribunal is perfectly in order and needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

7. Insofar as issue of negligence is concerned, the Tribunal, on the basis of P.W.1 evidence and Ex.P.1-FIR, held that the 1st respondent bus driver alone is responsible for the accident. Further, it is pointed out that the respondent has not examined any witness on its side to show that the accident occurred due to negligence of any other vehicle. Accordingly, the said finding of the Tribunal needs no interference and the same is confirmed.

8. The petitioner states that she suffered fracture of Both bones in her right leg. She produced a copy of Accident Register as Ex.P.2 and according to her, she took treatment in a Private Hospital as inpatient from 02.02.2010 to 15.02.2010 and also underwent surgery in her right leg. The Petitioner produced discharge summary from the said private hospital as Ex.P.3. It is therefore clear that the petitioner suffered grievous injuries and also undergone surgery for the fractured bones. The Petitioner examined P.W.2 doctor who assessed 35% disability and issued Ex.P.9 Disability certificate. Ex.P.10 and Ex.P.11 are the reports of X-ray taken by P.W.2 doctor, who opined that the petitioner is having difficulty in climbing stairs, sitting cross legged and walking for a long time and could not carry above half kg weight. According to P.W.2, the petitioner is having partial permanent disability at 35% and as she is a tailor, due to bone fracture in the right leg, she could not do pedalling to swing the machine. However, the Tribunal, as against the disability assessed by P.W.2 at 35%, considering the nature of employment and the difficulty faced by the Petitioner to attend her Tailoring work, has fixed 20% functional disability. Further, the Tribunal, by fixing the notional monthly income at Rs.4500/- applying 20% for the functional disability and by adopting multiplier of 14 as the petitioner was aged 43 years, calculated the loss of Future Earnings of the Petitioner as Rs.1,51,200/- (Rs.900 x 12 x14).

9. Disputing the said conclusion of the Tribunal, the learned counsel for the 2nd respondent-Insurance Company contended that there is no proof in respect of the claim that the petitioner was doing Tailoring work and further there is nothing on record to show that she was actually using a Pedalling tailoring machine to do her work and as such, even assuming that she suffered 35% partial permanent disability, it cannot be concluded that she suffered functional disability at any level. He further contended that unless and until functional disability is established, there is no need to apply multiplier to assess the loss of earnings. In the instant case, as the petitioner has not established her contention that even though medical expert assessed disability suffered by her at 35%, the same has caused her functional disability, only percentage method has to be applied.

10. In the considered view of this court, the above said contention of the learned counsel for the appellant-Insurance company, has considerable force and is justified. In such circumstances, it will be appropriate to apply percentage system to arrive at compensation for the permanent disability suffered by the Petitioner. As such, taking into consideration the partial permanent disability of the petitioner assessed by the doctor at 35%, it will be appropriate to give compensation at Rs.3000/- per percentage. Accordingly, towards partial permanent disability, this court is inclined to award the following sum as compensation.

Rs.3000/- x 35% = Rs.1,05,000/-.

Thus, a sum of Rs.1,05,000/- is awarded under the head " Partial permanent disability".

11. Considering the fact that the petitioner underwent surgery and suffered total loss of income in the course of treatment, this court is inclined to fix Rs.6500/- as notional income of the petitioner and calculate the loss of income for a period of 3 months as follows:-

6500 x 3 months = Rs.19,500/-

Further, taking into consideration all the attendant facts and circumstances of the case and the deposition of the petitioner before the Claims Tribunal, this court is inclined to modify the award passed by the Tribunal as shown below:-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income during the period of treatment	Rs. 2,100/-	Rs. 19,500/- (Rs.6500/- x 3 =Rs.19,500/-)
2	Attender charges	Rs. 1,400/-	Rs. 10,000/-
3	Transport charges	Rs. 2,500/-	Rs. 5,000/-
4	Extra nourishment	Rs. 5,000/-	Rs. 10,000/-
5	Damage to clothing and articles	Rs. 1,000/-	Rs. 6,000/-
6	Medical bills	Rs. 55,954/-	Rs. 55,954/-
7	Pain and suffering	Rs. 30,000/-	Rs. 30,000/-
8	Damages for mental and physical shock	Rs. 10,000/-	
9	Pecuniary loss	Rs.1,51,200/-	---
10	Partial Permanent Disability	Rs. 70,000/-	Rs.1,05,000/-
11	Loss of amenities	----	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
	Total	Rs. 3,29,154/-	Rs.2,51,454/- round off to Rs.2,51,500/-

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified and reduced to Rs.2,51,500/- from Rs.3,29,200/-;
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit;
- (iii) In view of the above modified award amount, the appellant/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order;
- (iv) On such deposit, the 1st respondent/claimant is permitted to withdraw the amount awarded as above, with accrued interest, less the amount if any already withdrawn, by filing proper application before the Tribunal, The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on the filing of such application.

Consequently, connected MP is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

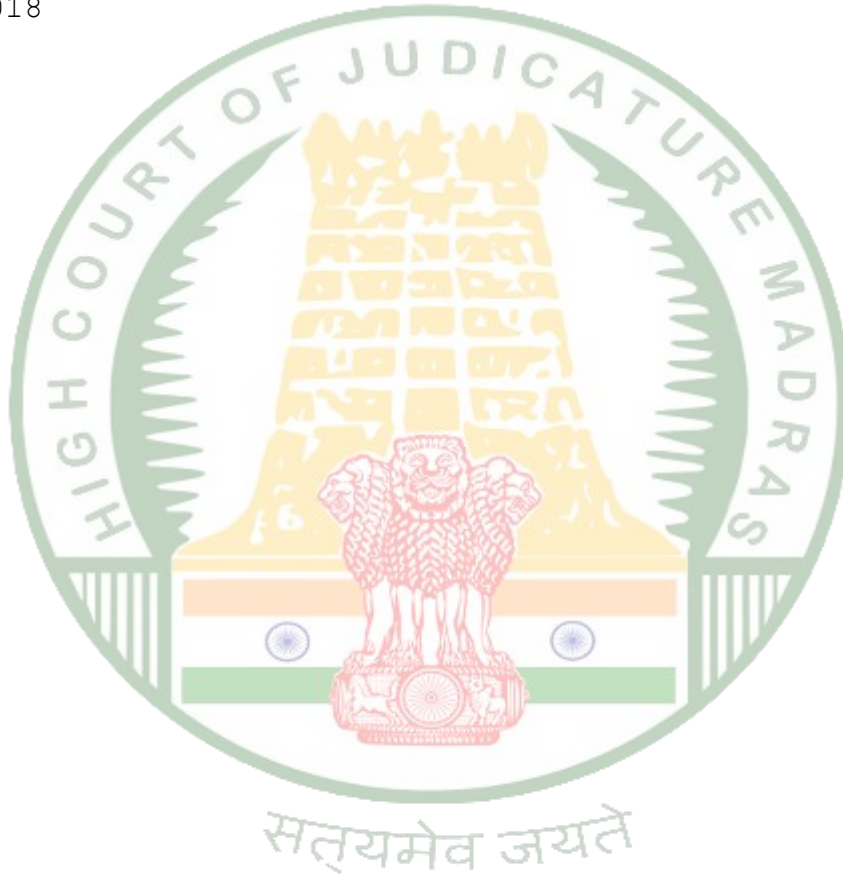
2.The Section Officer,
V.R.Section, High Court, Madras.

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+1 cc to Mr.D.Bhaskaran Advocate sr 9939

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