IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1406 of 2018
and
CMP.No.11285 of 2018

The Oriental Insurance Company Ltd
Third Party Claims Hub,
Oriental House, II Floor,
New No.216, Prakasam Salai,
Broadway, Chennai-600 108. ... Appellant/2nd respondent

..vs..

1.B.Santhi ... Ist respondent/Petitioner

2.K.SDuraivel ... 2nd Respondent/1st Respondent
(2nd Respondent set exparte
in the lower court, Hence notice is disbursed)

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 07.03.2018, made in MCOP.No.2586 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Court No.2, Small Causes Court), Chennai.

For Appellant : Mr.R.Sivakumar
Respondent 1 : Mr.V.J.Arun Kanagaraj
R2 : Exparte

JUDGMENT

Aggrieved over the finding of the Tribunal dated 07.03.2018, made in MCOP.No.2586 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Court No.2, Small Causes Court), Chennai, the 2nd respondent-Insurance Company filed this present appeal to set aside the award passed by the Tribunal.

2.By both side consent, this appeal is disposed of at the time of admission stage itself.

3.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4.The case of the petitioner is that on 21.06.2010 at about 7.00 p.m., when the petitioner was proceeding as pillion rider in the Motor Cycle bearing Registration No.TN-22-BC-7680, from Madambakkam to Guduvancherry, at the junction of Guduvancherry Market in G.S.T. Road, while going near Rani Mahal, a Tipper Lorry bearing Registration No.TN-21-K-2997, belonging to the first respondent, insured with the second respondent, came at high speed, driven in a rash and negligent manner, dashed against the two wheeler in which the petitioner was travelling, resulting in the petitioner suffering grievous multiple injuries all over her body and the petitioner's right hand was amputated. The accident occurred due to the negligence of the first respondent tipper lorry driver only. The petitioner was aged 47 years and by working as helper in building construction was earning a sum of Rs.6,000/- per month. Due to the injuries suffered, she is unable to do any work and she suffered loss of income. Thus, the petitioner sought for a sum of Rs.17,66,800/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the Tipper Lorry bearing Registration No.TN-21-K-2997 was not insured with them on the date of accident and as such they are not necessary party to the proceedings. The driver of the Tipper Lorry did not possess valid licence. The accident does not occur in the manner alleged by the petitioner. The negligence of the two wheeler rider also contributed to the accident. The claim of the petitioner about her age, occupation and monthly income is denied. The amount claimed under different heads is excessive. Thus, the second respondent-Insurance Company sought for dismissal of the claim petition.

5.Before the Tribunal, the injured petitioner examined herself as P.W.1 and medical expert as P.W.2, produced documents Ex.P1 to Ex.P15 to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.15,74,000/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent Insurance Company has come forward with the present appeal.

7.Heard the learned counsel appearing for the appellant/second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal wrongly fixed the negligence on the driver of the Tipper Lorry ignoring the negligence on the part of the rider of the Motor Cycle, in which the petitioner/claimant travelled as pillion rider. The Tribunal failed to consider the fact of non examination of employer of the petitioner/ claimant to prove her avocation and income. The disability fixed by the Tribunal is on the higher side. The monthly income and the multiplier adopted by the Tribunal is on the higher side. The amount provided under different heads is excessive. The appellant/second respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the petitioner/ claimant contends that she being a pillion rider only is entitled to seek compensation from any one of the vehicle owner and insurer of the vehicle involved in the accident. The petitioner having suffered amputation of her right hand and suffered 100% disability, she is unable to do any work resulting in total loss of earning capacity. The Tribunal has considered the evidence available on record properly passed just and proper award and the same needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

10.It is only quantum appeal. Both sides are not disputing the conclusion arrived at by the Tribunal that the negligence of the first respondent's driver alone caused the accident. The injured petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred on 21.06.2010. The Police also registered Ex.P1 First Information Report against the driver of the Tipper Lorry only. The contents of Ex.P1 FIR corroborates the version of the accident given by P.W.1. The rough sketch of the occurrence spot produced as Ex.P2 also supports the claim of the petitioner. On the other hand, the respondent has not let in any evidence either oral or documentary to disprove the petitioner's claim about the manner in which the accident occurred. As such, the Tribunal has correctly concluded that the negligence of the first respondent Tipper Lorry driver alone caused the accident.

11.The petitioner claims that the said Tipper Lorry bearing Registration No.TN-21-K-2997 belongs to the first respondent and insured with the second respondent. It is clear from Ex.P9 copy of the Insurance Policy that the first respondent vehicle was insured with the second respondent Insurance Company from 11.09.2009 to 10.09.2010. It is clear from Ex.P10 that the vehicle was having valid permit. As such, the respondents as the owner and insurer of the offending vehicle are liable to pay compensation.

12.The petitioner, who suffered injuries in the accident stated that she was aged 47 years and she suffered multiple grievous injuries all over the body and right hand was amputated. The petitioner further stated that immediately after the accident, she took treatment in Parvathi Hospital, Chrompet as inpatient from 21.06.2010 to 03.07.2010. She produced Ex.P3 Discharge Summary issued by the said hospital to prove her contention. The petitioner further stated that she under went surgery on his right arm which is amputated. Thus, the petitioner claims she had suffered permanent disability.

13.To substantiate her claim, the petitioner examined P.W.2 Doctor who assessed the disability suffered by the petitioner. P.W.2 stated that on personal examination of the petitioner and after analysing Ex.P12 X-ray, he found loss of left upper limb from shoulder. The Activities of the petitioner's daily life is affected. She is feeling pain and sufferings in the left leg and the knee joint movement is restricted. The knee fluctuation is 0 to 9 only. P.W.2 also stated that the petitioner finds difficulty in walking/climbing steps/sitting cross legged/squatting and walking for long time. According to him, the petitioner suffered 85% permanent disability and partial disability at 27%. The photo and C.D. of the petitioner showing the petitioner's amputated hand is marked as Ex.P14 and Ex.P15 respectively. Thus, it is clear from the evidence of P.W.2 that the petitioner has suffered amputation and consequently 100% loss of earning capacity. The Tribunal, accepting the evidence of P.W.2 and on the basis of Ex.P14 and Ex.P15 fixed the functional disability at 100%. As such, the learned counsel appearing for the appellant/Insurance company contends that the Tribunal was wrong in accepting the evidence of P.W.2 in toto, since he has not given treatment to the petitioner or attached any calculation sheet with Ex.P13 disability certificate. The said contention is to be accepted. Hence, the loss of earning capacity of the petitioner is fixed at 75%.

14.The petitioner claims that by working as a helper in building construction, she was earning Rs.6,000/- per month. She also produced Ex.P7 Salary Certificate issued by VAO, Pazhanthandalam Village, Sriperumpudhur Taluk, wherein it is certified that the petitioner by working as construction labour was earning a sum of Rs.6,000/- per month. Considering the same, and the fact that the accident occurred in 2010, it will be appropriate to fix the monthly income of the petitioner as Rs.6,000/-. Since the petitioner was aged 47 years, 25% of the income is added towards future prospects and the correct multiplier to be applied is 13. Thus, the loss of earning capacity is calculated as follows:-

Rs.6000/- add 25% Rs.1,500/- = Rs.7,500/- x 12 = Rs.90,000/- x 13 = Rs.11,70,000/- x 75% = Rs.8,77,500/-.

As such, the sum of Rs.11,70,000/- awarded by the Tribunal under the head loss of earning capacity is hereby reduced to Rs.8,77,500/-.

15. Considering the fact that the Doctor P.W.2 assessed the disability at 85%, it will be appropriate to provide compensation at the rate of Rs.3,000/- per percentage. As such, the petitioner is entitled for Rs.3,000/- x 85% = Rs.2,55,000/- as permanent disability. Considering the injuries suffered by the petitioner and the period of treatment undergone, the Tribunal provided for a sum of Rs.85,000/- towards pain and sufferings and the same is appropriate. The petitioner claims medical expenses and in support of the same, he produced Ex.P5, Ex.P7 and Ex.P8 Medical Bills. On that basis, a sum of Rs.50,943/- is provided towards medical expenses. The Tribunal has provided a sum of Rs.2,500/- towards Transportation, Rs.3000/- towards damage to cloths respectively. The same needs no modification. The Tribunal has provided a sum of Rs.7,500/- towards extra-nourishment and as the same is very low, as sum of Rs.10,000/- is provided towards extra-nourishment. Considering the period of treatment undergone by the petitioner and the nature of injuries suffered by her, she would have needed the help of attender at least for a period of four months. As such, a sum of Rs.16,000/- is provided towards attender charges at the rate of Rs.4,000/- p.m. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning capacity	11,70,000.00	8,77,500.00
2.	Permanent Disability	2,55,000.00	2,55,000.00
3.	Pain and sufferings	85,000.00	85,000.00
4.	Transportation	2,500.00	2,500.00
5.	Damage to cloths	3,000.00	3,000.00
6.	Extra-nourishment	7,500.00	10,000.00
7.	Medical Expenses	50,943.00	50,943.00
8.	Attender Charges	-	16,000.00
	Total	15,73,943.00	12,99,943.00

Accordingly, the sum of Rs.15,73,943/- Awarded by the Tribunal is modified and the same is reduced to Rs.12,99,943/- and the same is rounded to Rs.13,00,000/-.

16. In the result, this appeal is partly allowed. No costs. The amount of Rs.15,73,943/- awarded by the Tribunal dated 07.03.2018, made in MCOP.No.2586 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Court No.2, Small Causes Court), Chennai, is hereby reduced to Rs.13,00,000/-. The Second respondent-Insurance Company is directed to deposit the entire Award amount of Rs.13,00,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The excess amount if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected CMP. is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Special Subordinate Judge 2
   The Special Sub Court-2,
   Motor Accident Claims Tribunal,
   Small Causes Court,
   Chennai.

+1 CC to Mr.R. Sivakumar, Advocate sr 43850.

C.M.A.No.1406 of 2018

EV(CO)
SP(11/08/2018)