

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.1935 of 2015

The New India Assurance Co. Ltd.,
Issuing Office: D4B Branch (710701),
No.21, Pattulos Road, Chennai-2. ... Appellant/2nd Respondent

Vs.

1.Jayanthi
2.Faheem UR.Rahman ... Respondents/Petitioner &
1st Respondent

(R2 set ex-parte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 05.12.2014, made in MCOP.No.2927 of 2013, on the file of the IV Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

For Appellant : Mr.D.Bhaskaran

For R1 : Ms.M.Malar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree 05.12.2014, made in MCOP.No.2927 of 2013, on the file of the IV Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.2927 of 2013 on the file of the IV Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai. The 1st respondent filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 22.12.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the vehicle belonging to the 2nd respondent and the appellant is liable to

pay the compensation of a sum of Rs.4,57,800/-, as insurer of the vehicle.

4.Against the quantum of compensation awarded, the present appeal has been filed by the Insurance Company.

5.The learned counsel for the appellant contended that P.W.2, Doctor has given exaggerated percentage of disability, which is contrary to the medical evidence. The Tribunal has awarded excessive amounts on different heads without any basis. The learned counsel for the appellant referred to amounts awarded under different heads and contended that the same has to be reduced.

6.Per contra, the learned counsel for the 1st respondent contended that the Tribunal considering all the materials on record, awarded compensation and the same is not excessive and prayed for dismissal of the appeal.

7.Heard learned counsel for the appellant as well as the 1st respondent and perused the materials available on record.

8.From the materials available on record, it is seen that the claim is by the 1st respondent seeking compensation for the injuries sustained by her in the accident. Apart from examining herself as P.W.1, she examined P.W.2, Doctor and marked Disability Certificate as Ex.P8. P.W.2, Doctor has deposed the nature of injuries sustained and the disability sustained by the 1st respondent due to such injuries. The appellant has objected to percentage of disability as certified by P.W.2, Doctor. The Tribunal considering the evidence of P.W.2, nature of injuries and objection of the appellant, reduced the percentage of disability to 40% by giving reason for the same. The appellant has not let in any evidence, by examining any witnesses to disprove that Ex.P8, Disability Certificate is an exaggerated one and contrary to the medical procedures. 40% disability fixed by the Tribunal is excessive. Under such circumstances, the contention of the learned counsel for the appellant that the Tribunal had fixed excessive percentage of disability, is without merits.

9.The contention of the learned counsel for the appellant that the Tribunal has awarded excessive amounts on all the heads, has considerable force and is acceptable. The amounts awarded by the Tribunal under different heads are to be reduced and the same are liable to be modified.

10.The 1st respondent has not produced any documents to show that she spent Rs.40,000/- towards transportation charges. The Tribunal on assumption and without any basis, awarded a sum of Rs.40,000/- towards the same. Hence, it is reduced to

Rs.20,000/-. From the materials on record, it is seen that the 1st respondent was in hospital as in-patient from 22.11.2011 to 05.01.2012. The Tribunal has awarded a sum of Rs.40,000/- towards attender charges. The same is reduced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.42,000/- towards loss of income. From the award of Tribunal, it is seen that the Tribunal has fixed the notional income of the claimant as Rs.10,000/-. Except stating that the 1st respondent was tailor and was earning Rs.10,000/- per month, she has not let in any evidence with regard to her profession and monthly income earned by her. The sum of Rs.40,000/- granted towards loss of amenities and a sum of Rs.50,000/- granted towards loss of future prospects are without any evidence. The Tribunal has not given any reason for awarding compensation under the above three heads. The amounts awarded for loss of future prospects is set aside, as the 1st respondent is not entitled for the same. The amount awarded under the loss of income is reduced from Rs.42,000/- to Rs.30,000/- and the amount awarded under the loss of amenities is reduced from Rs.40,000/- to Rs.20,000/-. Similarly, the sum of Rs.50,000/- granted towards extra nourishment and Rs.70,000/- towards pain and suffering are excessive. Considering the nature of injuries and treatment taken by the 1st respondent, the same are reduced to Rs.20,000/- and Rs.30,000/- respectively. The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they are hereby confirmed. The compensation is reassessed as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,20,000/-	1,20,000/-	confirmed
2.	Transportation	40,000/-	20,000/-	reduced
3.	Extra Nourishment	50,000/-	20,000/-	reduced
4.	Pain and Suffering	70,000/-	30,000/-	reduced
5.	Attender Charges	40,000/-	20,000/-	reduced
6.	Damage of Clothing Articles	3,000/-	3,000/-	confirmed
7.	Medical Expenses	2,800/-	2,800/-	confirmed
8.	Loss of Income	42,000/-	30,000/-	reduced

9.	Loss of amenities	40,000/-	20,000/-	reduced
10.	Loss of future prospects	50,000/-	-	Set aside
	Total	4,57,800/-	2,65,800/-	Reduced by Rs.1,92,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.4,57,800/- awarded by the tribunal is reduced to Rs.2,65,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. It is submitted by the learned counsel for the Insurance Company that they had already deposited a sum of Rs.3,50,000/- to the credit of M.C.O.P.No.2927 of 2013 on the file of the IV Judge, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai. Hence, the claimant/1st respondent is permitted to withdraw the modified compensation amount of Rs.2,65,800/- along with accrued interest and costs, less the amount already withdrawn, if any, by filing necessary application before the Tribunal. The appellant-Insurance Company is permitted to withdraw the balance amount lying to the credit of M.C.O.P.No.2927 of 2013, by filing necessary application. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

g s a
To

1. The IV Judge,
(Motor Accidents Claims Tribunal),
Small Causes Court, Chennai.
 2. The Section Officer, VR Section, High Court, Madras.
- +1cc to Mr.D.Bhaskaran, Advocate SR.No.77147
+1cc to Mr.M. Malar, Advocate SR.No.77202

CMA.No.1935 of 2015

SR(CO)

GMV (13/12/2018)