

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2360 of 2015 and 855 of 2016

& M.P.No.1 of 2015

C.M.A.No.2360 of 2015:

M/s. National Insurance Co.Ltd,
Motor Party Third Claims Cell,
No.751, Anna Salai,
Chennai-600 002. ... Appellant

Vs.

1. A.Muzammil
2. Amit P. Asrani ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2015 made in M.C.O.P.No.1237 of 2012 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For R1 : Mrs. Saleem Fathima
for Mr.M. Swamikannu
For R2 : No appearance

C.M.A.No.855 of 2016

A.Muzammil ... Appellant

Vs.

1. Amit P. Asrani
(set exparte in the trial Court)

2.M/s. National Insurance Co.Ltd,
Motor Third Party Claims Cell,
No.751, Anna Salai,
Chennai-600 002.
Now functioning at
National Insurance Co. Ltd.
Motor Third Party Claims - Hub
3rd floor, Regina mansion
No.46, Moore street, Chennai-600 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 11.03.2015 made in M.C.O.P.No.1237 of 2012 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mrs. Saleem Fathima
for Mr.M. Swamikannu

For R1 : set exparte before Trial Court

For R2 : Mr.N.Vijayaraghavan

C O M M O N J U D G M E N T

C.M.A.No.2360 of 2015 is filed by the Insurance Company against the award dated 11.03.2015 made in M.C.O.P.No.1237 of 2012 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

C.M.A.No.855 of 2016 is filed by the claimant for enhancement of compensation granted by the award dated 11.03.2015 made in M.C.O.P.No.1237 of 2012 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

2.Both the appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

3.Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

4.The appellant/Insurance Company is second respondent in M.C.O.P.No.1237 of 2012 on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai. The claimant filed the said claim petition claiming a sum of Rs.13,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.02.2012.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving by both the riders of the motorcycle belonging to the claimant as well as the first respondent and fixed contributory negligence equally on both of them and awarded a total sum of Rs.9,96,280/- and directed the second respondent, who is insurer of the first respondent, to pay 50% of the award amount i.e., Rs.4,95,700/- as compensation to the claimant.

6. Aggrieved against the said award dated 11.03.2015 made in M.C.O.P.No.1237 of 2012, the second respondent/Insurance Company has come out with C.M.A.No.2360 of 2015 challenging the liability fastened on the second respondent as well as quantum of compensation awarded by the Tribunal. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with C.M.A.No.855 of 2016 seeking enhancement of compensation.

7. The learned counsel appearing for the claimant contended that the accident occurred only due to the rash and negligent driving by the first respondent. The first respondent's wife is an advocate and she influenced the police and registered a false complaint against the claimant. The claimant has sent legal notice dated 13.03.2012 to the Sub-Inspector of Police, Assistant Commissioner of Police K-4 Police Station and first respondent, which was marked as Ex.P2. The first respondent as well as police authorities did not send any reply. The first respondent and her husband did not appear before the Criminal Court and no progress with regard to production of witnesses by prosecution has been made. The proceedings in C.C.No.2648 of 2012 was stopped as per Section 258 of the Criminal Procedure Code and the claimant was released. The Tribunal without considering the above facts, has erroneously fixed 50% negligence on the part of the claimant. The Tribunal has not awarded any amount towards loss of expectation of life as well as mental illness. The amount awarded by the Tribunal towards future prospects is meagre. Further, the claimant claimed compensation towards future medical expenses, as she could not drive the two wheeler. The Tribunal has awarded meager amounts under the different heads. Therefore, he prayed for enhancement of compensation.

8. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal failed to see that F.I.R. was registered only against the claimant and charge sheet was also laid against the claimant, who was driving the vehicle in a rash and negligent manner and dashed against the first respondent. The claimant has stated in the claim petition that her income was Rs.9,000/- per month. The Tribunal erred in fixing the monthly income of the claimant at Rs.12,600/- per month. The Tribunal failed to see that the employer of the claimant was not examined and bank statement was not filed. The Tribunal erred in adopting multiplier method for disability assessed at 20%, where there is no proof for loss of earning capacity. The Tribunal erred in awarding 50% enhancement towards loss of future prospectus, which is highly exaggerated. The claimant continued to work and there is no loss of income for the claimant and prayed for setting aside the award of the Tribunal.

9. Heard the learned counsel appearing for the claimant as well as the second respondent and perused the materials available on record.

10. The claimant has pleaded in the claim petition that the first respondent drove his two wheeler in a rash and negligent manner and dashed against the two wheeler driven by the claimant. On the other hand, the wife of the first respondent, who is an advocate lodged a complaint against the claimant and charge sheet was also filed against her. The claimant has sent notice to the Sub-Inspector of Police, Assistant Commissioner of Police K-4 Police Station as well as to the first respondent, which was marked as Ex.P2. The first respondent owner of the motorcycle objected the notice and F.I.R. being registered against the claimant. There is no reply to the said notice either by the police officials or by the first respondent. No evidence was let in by the first respondent to prove that the said notice was considered by the police and action was taken by the police. When it is an admitted fact that the first respondent, his wife or any other witnesses have not participated in the criminal proceedings in C.C.No. 2648 of 2012 initiated against the claimant and the learned VI Metropolitan Magistrate, Egmore, Chennai, stopped the proceedings as per Section 258 of the Criminal Procedure Code, as there was no progress with regard to production of witnesses by the prosecution that has been made, the Tribunal failed to consider Ex.P2 the objection by the claimant and Ex.P3, order passed by the learned VI Metropolitan Magistrate, Egmore, Chennai and erroneously held that both the claimant as well as first respondent contributed negligence for the accident and fixed contributory negligence 50% each on the claimant as well as on the first respondent. The said finding is erroneous and the same is set aside. This Court is of the view that the first respondent is responsible for the accident and the second respondent/Insurance Company as insurer of the motorcycle is liable to pay the entire compensation awarded by the Tribunal.

11. As far as quantum of compensation is concerned, it is not in dispute that the claimant was working as sales and service technician in M/s.Cease Fire Industries Limited. The nature of work involves much travelling. P.W.2/Doctor assessed the disability of the claimant at 25% and the Tribunal reduced the same to 20% and adopted multiplier method and the same is in order. The contention of the learned counsel appearing for the second respondent/Insurance Company that the claimant has claimed a sum of Rs.9,000/- per month as salary in the claim petition and the Tribunal erroneously fixed Rs.12,600/- as monthly income of the claimant based on the salary certificate, has considerable force. As rightly pointed out by the learned counsel for the second respondent that the claimant has not examined his employer and has not produced any bank statement, the amount fixed by the Tribunal is reduced to Rs.9,000/- per

month. In view of the same, the salary of the claimant is fixed at Rs.9,000/- per month as stated in the claim petition. The Tribunal has added 50% towards future prospects. The reason given by the Tribunal for adding 50% towards future prospects is not correct and the claimant is not entitled for any addition. In view of the same, the compensation granted by the Tribunal towards loss of future earning capacity is reduced to Rs.3,88,800/- (9000 X 12 X 20/100 X 18). The Tribunal has not granted any amount towards marital prospects. The claimant is entitled to a sum of Rs.1,00,000/- towards marital prospects. The amounts granted by the Tribunal under different heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	42,000	42,000	confirmed
2.	Loss of income for three months	37,800	37,800	confirmed
3.	Transportation	10,000	10,000	confirmed
4.	Extra nourishment	10,000	10,000	confirmed
5.	Attendant charges	25,000	25,000	confirmed
6.	Damages to clothes	5,000	5,000	confirmed
7.	Loss of future earning capacity	8,16,480	3,88,800	reduced
8.	Pain and suffering	25,000	25,000	confirmed
9.	Loss of amenities	25,000	25,000	confirmed
10.	Marital prospects	-	1,00,000	granted
	Total	9,96,280	6,68,600	Reduced by Rs.3,27,680/-

12. With the above modification, the Civil Miscellaneous

Appeals are partly allowed. The compensation of Rs.9,96,280/- awarded by the Tribunal is hereby reduced to Rs.6,68,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The second respondent/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.1237 of 2012, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Kj

To

1.The Motor Accidents Claims Tribunal
VI Judge, Small Causes Court, Chennai.

2.The Section officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.M.Swamikannu, Advocate, S.R.No. 81418, 81419

+2cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 81926,81927

सत्यमेव जयते

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& M.P.No.1 of 2015

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GN(12/04/2019)