



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2670 of 2015

Nalina

..Appellant/Petitioner

Versus

1.Mathiselvan

2.Royal Sundaram Alliance Insurance Company Ltd,
No.46, Whites Road, Royapettah,
Chennai-40.

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 19.09.2013 made in M.C.O.P.No.2393 of 2009 on the file of the IIIrd Court of Small Causes, (Motor Accident Claims Tribunal) at Chennai.

For Appellant : Mr.T.G.Ravichandran

For Respondents : Mr.S.Manohar for R2
R1- Exparte

J U D G M E N T

The appellant has filed this appeal against the judgment and decree dated 19.09.2013 made in M.C.O.P.No.2393 of 2009 on the file of the III Motor Accident Claims Tribunal at Chennai.

2. Heard the learned counsel for the Appellant and the learned counsel appearing for the 2nd respondent/Insurance Company.

3. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

4. The case of the petitioner is that on 02.02.2009 about 13.20 hours when the petitioner was travelling as a pillion rider in motor cycle bearing Registration No.TN01G3589 near Tamil Nadu Legal Service Authority in North Fort Road from West to East, car bearing Registration No.TN-02-P-0303 came from behind in high speed dashed against the motor cycle in which the petitioner was travelling, resulting in the petitioner suffering



grievous injuries. At the time of the accident, the petitioner was a student and by doing part time work was earning monthly a sum of Rs.5,000/-. Due to the injury suffered by her, the petitioner is not able to attend to her work regularly, she is still taking treatment continuously. The driver of the 1st respondent car alone is responsible for the accident. Hence, the respondents as the owner and insurer of the offending vehicle are liable to pay Rs.5,50,000/- to the petitioner. Hence, the petition.

5. On the other hand, opposing the petition by filing the counter, the 2nd respondent/Insurance Company contends that the manner of accident is to be established by the petitioner. There is negligence on the part of the petitioner as well and contributory negligence is to be fixed on the petitioner. The nature of injury sustained and the failure of treatment and disability suffered and other factors pleaded by the petitioner is to be proved by her. The amount claimed is highly excessive. The 2nd respondent seeks dismissal of the petition.

6. Before the tribunal, the petitioner examined herself as P.W.2 and medical experts as P.Ws.3 and 4 and produced Exs.P1 to P.24 to prove her claim. Not being satisfied with the quantum awarded, the petitioner has come forward with the present appeal.

7. Heard both sides counsel and perused the material available on record.

8. The learned counsel for the petitioner contended that the tribunal failed to calculate the disability properly and reduced the percentage of disability without any reason. The age, occupation, income, and future prospects of the injured are not considered by the tribunal in proper manner. The fact that the petitioner was forced to take rest for 9 months was not considered and no loss of income for the said period was provided by the tribunal. The tribunal also failed to provide to any amount as future medical expenses and for the mental agony suffered by the petitioner. Thus, the petitioner seeks to enhance the quantum by entertaining the appeal.

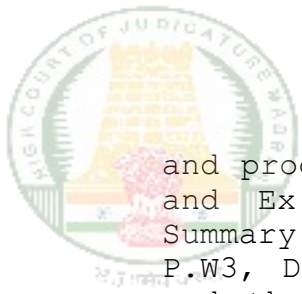
9. Per contra, the learned counsel appearing for the respondents contended that the petitioner has to prove her monthly earning and also negligence of the respondent driver as the sole reason for the accident. The tribunal has properly considered the evidence, but still fixed the compensation at a higher rate. As such, the respondents contended that the claim of the petitioner in the appeal is exorbitant and no ground is made out for the enhancement of the amount. Hence, the respondents seek dismissal of the appeal.



10. It is evident from the deposition of the petitioner who deposed as P.W.2 that on the fate full day of 02.02.2009 at about 13.20 hours when herself along with P.W.1, Bhuvaneswari, petitioner in connected O.P.No.2392/2009 were travelling in a motor cycle bearing Registration No.TN-01-G-3589, the 1st respondent car bearing Registration No.TN-02-P-0303, came from behind and dashed against the motor cycle. The driver of the car without following the traffic rules came at high speed and unable to control the vehicle, dashed the motor cycle in which the petitioner was travelling. The oral evidence of P.W.1, is supported by the contents of Ex.P1, F.I.R, as well as Ex.P3, Copy of charge sheet. Admittedly, the complaint was lodged against the 1st respondent before the Police. After investigation the police laid the charge sheet against the respondent car driver as the accused as mentioned in Exs.P1 and P3. The respondent has not chosen to let in any evidence to contradict, oral evidence of P.W.2 or the averments of the Ex.P1, F.I.R, Ex.P3, Charge sheet. Further, the contention of the petitioner is corroborated by Ex.P2, Rough Sketch, of the occurrence spot. Thus, it is clear, from the oral and documentary evidence available on record that the accident occurred only due to rash and negligence of the 1st respondent vehicle driver. The finding of the tribunal to the effect is just and proper.

11. The petitioner who deposed as P.W.2 stated that she was 32 years of age at the time of accident and produced Ex.P18, Identity Card issued by the Bar Counsel of Tamil Nadu wherein her Date of Birth is stated as 11.05.1976. On the basis of the same, it is clear that the petitioner was 32 years old on the date of accident on 02.02.2009.

12. Admittedly, the petitioner was studying final year B.L, at the time of accident. It is clear, from Ex.P.18, Identity Card issued by the Bar Counsel of Tamil Nadu that the petitioner enrolled as an Advocate during 2011. The petitioner's claim is that at the time of accident, the petitioner was not only a law college student but also a worker earning Rs.5,000/- per month. There is nothing on record to prove that the petitioner was carrying on any work and making earning out of it. Admittedly, she was a final year Law college student at the time of the accident. In such circumstances, the claim of the petitioner that due to the injury suffered by the petitioner she has loss of income till she recovered is unsustainable. The finding of the tribunal to that effect and holding that the petitioner is not entitled to any compensation on that count is just and proper. The petitioner has stated in her evidence that she suffered fracture of right frontal bone, right root of orbit and ethmoid zygoma bone and multiple hemorrhagic contusion in the brain and contusion at left shoulder and knee. The petitioner states that she was examined as P.W.3 as well as P.W.4, Doctor



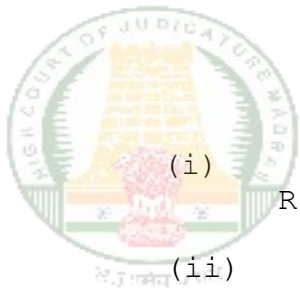
and produced the disability certificate issued by them as Ex.P20 and Ex.P23, the wound certificate as Ex.P14 and Discharge Summary as Ex.P15, medical Prescriptions as Ex.P16. According to P.W.3, Doctor, the disability suffered by the petitioner is 40%, and the certificate issued by him is Ex.P20. Likewise, P.W.4, Doctor, says the disability suffered by the petitioner is 50% and the certificate issued by him is Ex.P23.

13. Taking into consideration, the above said evidence and further the deposition of P.W.4, Doctor, who stated that due to head injury suffered by the petitioner she is suffering from memory deficiency, head ache and unable to walk fast, it will be appropriate to fix the disability at 50%. Considering the age of the petitioner as well as the other reasons stated by the petitioner it would be appropriate to asses the loss due to disability suffered by her at Rs.4,000/- per percentage. Thus, the disability is calculated as $\text{Rs.4000} \times 50 = \text{Rs.2,00,000}$. Considering the injury suffered by the petitioner towards the Pain and Suffering Rs.50,000/- is awarded, Medical Expenses Rs.75,000/-, considering the Ex.P17, Medical Bills, produced by the petitioner on the period of treatment undergone by her towards Medical Expenses Rs.70,000/- is awarded, Attender charges Rs.5,000/-, Transport Rs.10,000/-, Extra Nourishment Rs.10,000/-, Damage of Clothing Rs.10,000/-, Loss of amenities Rs.30,000/-.

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Medical Expenses	75,000.00	70,000.00
2	Pain and Suffering	25,000.00	50,000.00
3	Transport to Hospital	5,000.00	10,000.00
4	Attender Charges	-	5,000.00
5	Extra Nourishment	5,000.00	10,000.00
6	Damage to clothes	1,000.00	10,000.00
7	Loss of amenities	-	30,000.00
8	Permanent Disability	1,20,000.00	2,00,000.00
9	Total	2,31,000.00	3,85,000.00

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



(i) The award of the Tribunal is modified and enhanced from Rs. 2,31,000/- to Rs.3,85,000/-.

(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 enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, 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 injured claimant is permitted to withdraw the amount awarded as above 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.

(v) In view of the order of this Court dated 20.11.2015 interest is waived off for 36 days default period. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bri

To

1. The IIIrd Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No.9252
+1cc to Mr.S.Manohar, Advocate, S.R.No.9423

C.M.A.No.2670 of 2015

PA(CO)
CS/08/05/18