

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1441 of 2014

A.Rani ... Appellant/Petitioner

vs

1.The United India Insurance Co.Ltd.,
South India Co.op Building, III Floor
38, Anna Salai, Chennai-2. ...2nd respondent/1st respondent

2.N.S.Ezhilarasi ...1st respondent/2nd respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.06.2002 made in M.C.O.P.No.2505 of 1999 on the file of Motor Accident Claims Tribunal, Fast Track Court-III, Chennai.

For appellant : : Mr.K.Manoranjitham
for Respondents : : Mr.C.Paranthaman for R1.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 12.06.2002 made in M.C.O.P.No.2505 of 1999 on the file of Motor Accident Claims Tribunal, Fast Track Court-III, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the Petitioner is that on 23.08.1998, at 15.45 hours, while the petitioner was standing in the Bus stand in G.N.T.Road, Moolakadai, a tempo van bearing Reg.No.TDD-410 came at high speed from North to South and the driver lost control of the vehicle, dashed against the Petitioner, who was standing in the Bus stop, causing her grievous injuries and all over the body. The accident occurred due to rash and negligent driving of the 1st respondent vehicle driver only. The Petitioner was aged 38 years and by doing tailoring work, was earning Rs.125 per day. As she suffered concussion in the brain, contusion and lacerated injury 7 x 5 cm in Lower abdomen and multiple abrasion all over the body, she is unable to do her tailoring work. The Petitioner suffered loss of income due to partial permanent disability suffered by her. Hence, she seeks a sum of Rs.1,00,000/- from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance Company contends that the accident did not occur in the manner as alleged by the Petitioner. The compensation claimed by the Petitioner is excessive. The accident did not occur due to rash and negligent driving of the vehicle bearing Reg.No.TTD-410. Hence, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 to 7 and produced documents Ex.P.1 to P.23 to prove her claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence, held that the driver of the 1st respondent vehicle alone is responsible for the accident, awarded a sum of Rs.8,000/- as compensation to the Petitioners. Being not satisfied with the quantum of the Award, the Petitioner has come forward with the Present Appeal.

5. The learned counsel for the appellant/Petitioner contends that the Tribunal failed to consider the evidence on record properly. The Tribunal erred by not providing any amount for the Pain and Suffering as well as loss of earning during treatment period; for the disability also, the Petitioner was not granted just compensation. Thus the petitioner seeks to enhance the quantum of award by allowing the appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the injury suffered by the Petitioner is only simple and she has not suffered any loss of income as alleged by her. The Tribunal on proper appreciation of material on record, has awarded just and fair compensation and there is no need to interfere with the same. Hence, the 2nd respondent seeks dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The Tribunal took up the present MCOP.No.2505 of 1999 along with M.C.O.P.No.2501/99, 2502/99, 2503/99, 2504/99 and 2506/99 for joint trial. Before the Tribunal, the present petitioner deposed as P.W.5 and clearly stated that on 23.08.1998 at about 3.45 p.m., the Tempo van dashed against her, causing grievous injuries. The other witnesses, who were examined before the Tribunal, who deposed as P.Ws.1 to 4 also stated that the accident occurred only due to negligence of the 1st respondent van driver. There is no contra evidence let in by the 2nd respondent to disprove the version of P.W.1 to P.W.6 about the nature of occurrence of the accident. Further the Police registered Ex.P.2 FIR against the 1st respondent only. As such, it is clear that the negligence of the 1st respondent driver alone caused the accident.

9. The Petitioner states that by working as Tailor, she was earning Rs.125/- per day. But now due to injury suffered by her, she is unable to do any work. The Petitioner has not produced any acceptable evidence regarding her profession and earnings. Hence, the Tribunal is justified in fixing the earning at Rs.50/- per day for the accident which took place on 23.08.1998. As per the evidence of P.W.1, she suffered concussion in brain, contusion and lacerated injury 7 cm x 5 cm lower abdomen and multiple abrasion all over the body. Further, she suffered injury in head, fracture on both sides of hip. She took treatment in hospital at Moolakadai as well as Stanley Hospital and produced both Hospital Discharge summary as Ex.P.12 and 13. The doctor who examined the Petitioner deposed as P.W.7 has stated that the petitioner suffered 25% permanent disability. According to him, the petitioner was feeling pain while doing any work and she is having injuries on the left side hip bones. The disability certificate issued by him as Ex.P.22. The doctor who assessed the disability at 25%. However, the Tribunal has not provided any amount towards disability suffered by the Petitioner. Taking into account the fact that P.W.7 doctor did not give any treatment to the Petitioner and no calculation memo is attached in Ex.P.22 disability certificate, it will be appropriate to fix the disability at 20%. There is no evidence to show that the Petitioner suffered any functional disability due to the injury suffered by her. Hence for the disability suffered by her, she can be compensated at the rate of Rs.2000/- per percentage. Thus, the loss of earnings due to partial permanent disability is calculated at the rate of Rs.2000/- per percentage as shown under:-

Rs.2000/- x 20% = Rs.40,000/-

The petitioner due to the injury suffered by her definitely could not have attended her tailoring work for three months. Hence, she is entitled for loss of income during the period of treatment is as follows:-

Rs.1500 x 4 = Rs.6,000/-

Further, considering the nature of injury suffered by the petitioner and the treatment underwent by her, it is appropriate to award the following sums:-

For nutritious food = Rs.3000/-

Transport expenses = Rs.2000/-

for pain and suffering = Rs.10000/-.

Accordingly, the award of Rs.8000/- granted by the Tribunal is hereby enhanced to Rs.61,000/- as shown below:-

Partial permanent disability	: Rs.40,000/-
Loss of income during the period of treatment	: Rs. 6,000/-
For nutritious food	: Rs. 3,000/-
Transport expenses	: Rs. 2,000/-
for pain and suffering	: Rs.10,000/-.

Total	: Rs.61,000/-

10. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed;

(ii) The Appellant/Claimant is entitled to a sum of Rs.61,000/- (Rupees sixty one thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate cost;

(iii) The second respondent-Insurance company (1st respondent herein) is directed to deposit the award amount before the Tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal shall pass appropriate orders on application filed by the Appellant for disbursal of the award amount. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
Fast Track Court No.III, Chennai.

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

+2cc to Mr.C.Paranthaman, Advocate sr.no.20312

+1cc to M/s.R.Manoranjitham, Advocate sr.no.21199

C.M.A.No.1441 of 2014

nr 10/05/2018