

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2863 of 2011

Dhanalakshmi ... Appellant /Petitioner

..vs..

1.V.Nallasivam
R.Ramakrishnan (died)

2.United India Insurance Co. Ltd.,
rep. by its Branch Manager,
No.1170, 2nd Floor,
Mettur Road, Muthaiah Complex,
Erode, ... Respondents/1 & 3 Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 31.03.2011 made in MCOP.No.180 of 2010 on the file of the Motor Accident Claims Tribunal/II Additional Sub Court) Erode.

For Appellant : Mr.S.Kaithamalaikumaran

For Respondents : Mr.T.Ravichandran for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 31.03.2011 made in MCOP.No.180 of 2010 on the file of the Motor Accident Claims Tribunal/II Additional Sub Court) Erode, the petitioner/claimant filed this present appeal seeking enhancement of award amount.

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

3. The case of the petitioner is that on 08.03.2008 at about 8.00 a.m., as the petitioner was travelling as a pillion rider

in a two wheeler bearing Registration No.TN-33-Q-2223, driving by her husband in Perunthurai to Coimbatore Main Road, while going near the Sri Venkateshwara Petrol Bunk, the first respondent's drove the Marthi Car bearing Registration No.TN-45-E-6850 in a rash and negligent manner, came at high speed dashed against the two wheeler in which the petitioner was travelling as pillion rider causing her multiple grievous injuries. The accident occurred only due to the rash and negligent driving by the first respondent's vehicle driver. The petitioner was aged about 35 years at the time of accident and by working as agriculturist was earning a sum of Rs.5,000/- per month. Due to the injuries suffered in the accident, the petitioner is unable to attend to her normal work. Thus, the petitioner seeks a sum of Rs.7,50,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the third respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The injuries suffered by the petitioner is simple in nature and she has recovered fully from the same. The age, avocation and income of the petitioner as alleged by petitioner is not correct. The nature of injuries suffered by the petitioner being only simple and she has recovered fully and there is no need for any compensation. The accident took place only due to the rash and negligent driving by the rider of the two wheeler who is the husband of the petitioner. The rider of the two wheeler did not possess valid driving licence, he has contributed to the accident. The claim of the petitioner is exorbitant. Thus, the third respondent sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined herself as P.W.1 and three witness were examined as P.W.2 to P.W.4 and produced documents Ex.P1 to Ex.P23 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 alone caused the accident, passed award for a sum of Rs.3,00,500/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. The learned counsel appearing for the appellant/petitioner contends that the Tribunal failed to appreciate the evidence properly. The actual expenditure

incurred by the petitioner for treatment was clearly spoken to by P.W.2. As per Ex.P8 Medical Bills, Rs.66,989/- was incurred by the petitioner. However, the Tribunal failed to consider the oral evidence of P.W.2 and also Ex.P8 Medical bills. The Tribunal also without any reason fixed the disability at 25%, ignoring the evidence of P.W.3 Doctor and Ex.P22 Disability Certificate. The Tribunal also failed to consider Ex.P10 under which it is clearly proved that a sum of Rs.39,200/- was spent by the petitioner towards transport expenses. Without considering the same, the Tribunal awarded only a sum of Rs.5,000/- towards transport charges. The amount awarded under the different heads is very low. As such, the petitioner sought for enhancing the award amount by allowing the appeal.

8. Per contra, the learned counsel appearing for the third respondent-Insurance Company contends that the injuries suffered by the petitioner is only simple in nature and the accident occurred not due to the negligence of the first respondent driver. The amount awarded by the Tribunal under the different heads is highly excessive. No ground is made out to enhance the award amount. Thus, the third respondent Insurance Company sought for dismissal of this appeal.

9. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

10. The appeal is filed mainly on the issue of quantum of award passed by the Tribunal. No issue has been raised regarding the negligence aspect. The Tribunal on the basis of oral evidence of P.W.1 as well as Ex.P1 First Information Report filed against the first respondent's driver and Ex.P7 Final Report filed by the police after completion of investigation, blaming the first respondent vehicle driver as the cause for the accident and also taking into account Ex.P2 Rough Sketch, Ex.P3 Observation Mahazar prepared by the police, concluded that the negligence of the first respondent vehicle driver alone caused the accident. The Tribunal also found that as per Ex.P5 and Ex.P6 Motor Vehicles Inspector's Report that there was no mechanical defect in the vehicles involved in the accident. As such, the said finding of the Tribunal that the negligence of the first respondent vehicle driver alone caused the accident is just and proper and the same needs no interference.

11. The petitioner stated that she suffered fracture on her left parietal depressed, right side forehead and injuries just above the eye brow and right cheek. To prove the same, she produced Ex.P4 wound certificate. She further stated that immediately after the accident, she took treatment in KMC

Hospital at Perunthurai. Subsequently, she was admitted for further treatment in KG Hospital, Coimbatore. According to her, she underwent surgical treatment for the fractures suffered in the head and she was treated as inpatient in one month in the said hospital. The Doctor, who deposed as P.W.3 stated that he made personal assessment of the petitioner and also took X-ray and CT Scan report to fix the disability suffered due to the head injury at 30%. It is also clear from the evidence of P.W.2 that the petitioner suffered one grievous injury and other simple injuries. As stated earlier, the petitioner underwent surgical treatment in K.G. Hospital and as per Ex.P14 and Ex.P15 Discharge Summary, the petitioner took treatment as inpatient from 08.03.2008 to 31.03.2008 and again from 02.06.2008 to 11.06.2008. The Tribunal after considering the particulars furnished in Ex.P14 and Ex.P15 concluded that the petitioner was discharged in good condition and as such she has not suffered any permanent disability. Pointing it out, the learned counsel appearing for the petitioner contended that the discharge summary stated only the patient was discharged in normal condition and it does not mean that the disability caused due to the fracture and grievous injuries suffered by the petitioner is not there. Admittedly, P.W.2 and P.W.4 Doctors have stated about the disability suffered by the petitioner. As the disability is fixed by the Doctors at 30% and in the absence of any contra evidence let in by the respondents, it is not proper to reduce the same to 25% by the Tribunal without any materials to do so. Hence, the disability suffered by the petitioner is fixed at 30%. As the accident occurred during 2008 and considering the nature of injuries suffered by the petitioner, it will be appropriate to compensate her at the rate of Rs.2,000/- per percentage instead of Rs.1,500/- fixed by the Tribunal. Thus, the disability compensation calculated as follows:-

$$\text{Rs.2000/-} \times 30\% = \text{Rs.60,000/-}.$$

12. The petitioner claims by doing agriculturist, she was earning a sum of Rs.5,000/- per month. However, there is no proof was produced in that regard. Admittedly, the petitioner suffered fracture and she had taken treatment as inpatient for nearly two months in K.G. Hospital, Coimbatore. In view of the injuries suffered and the period of treatment undergone by the petitioner, she could not have attended normal work at least for four months. As such, in the absence of any evidence regarding the monthly income of the petitioner, keeping in mind that she was employed as agriculturist, it will be appropriate to fix the notional income at Rs.4,000/- per month. Thus, she suffered loss of income during treatment period and the same is compensated as follows. $\text{Rs.4,000/-} \times 4 = \text{Rs.16,000/-}$. The petitioner states that she went to Hospital from Erode to Coimbatore for taking

treatment and she under gone surgical treatment also. According to her, she spent a sum of Rs.39,200/- as evidenced by Ex.P10. However, the petitioner was treated as inpatient in K.G. Hospital, Coimbatore for nearly a month. As such, it will be appropriate to award Rs.15,000/- towards transport charges. Like wise, a sum of Rs.15,000/- awarded towards attender charges and a sum of Rs.30,000/- is awarded towards pain and suffering. Ex.P8 medical bills, it is contended by the learned counsel for the petitioner that a sum of Rs.66,989/- was spent for medicine purchase. The same was not considered by the Tribunal and rejected the same on the ground that the medical bills in Ex.P8 does not related to the petitioner. However, on verification, it is found that the medical bills issued by the Hospital in which the petitioner took treatment and it is pointed out that the same relates to the petitioner only. As such, this Court is inclined to entertain Ex.P8 Medical Bills and awarded a sum of Rs.66,989/- towards medical bills. Considering the nature of injuries and also the long period of treatment under gone by the petitioner, the amount awarded by the Tribunal under the different heads is modified and enhanced as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	37,500.00	60,000.00
2.	Loss of income during treatment period		16,000.00
3.	Transport to Hospital	5,000.00	15,000.00
4.	Extra-nourishment	10,000.00	15,000.00
5.	Medical Bills Rs.2,28,000/- + 66,989/- = Rs.	2,28,000.00	2,94,989.00
6.	Pain and sufferings	20,000.00	30,000.00
	Total	3,00,500.00	4,30,989.00

Accordingly, the amount of Rs.3,00,500/- awarded by the Tribunal is enhanced to Rs.4,30,989/- and the same is rounded to Rs.4,31,000/-.

13. In the result, this appeal is partly allowed. No costs. The sum of Rs.3,00,500/- awarded by the Tribunal, dated 31.03.2011 made in MCOP.No.180 of 2010 on the file of the Motor Accident Claims Tribunal/II Additional Sub Court) Erode, is hereby enhanced to Rs.4,31,000/-. The second respondent Insurance Company is directed to deposit the entire enhanced award amount of Rs.4,31,000/- 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. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Sub Judge,
Erode.

2.The Section Officer,
VR Section,
High Court, Madras(2 Copies)

+1cc to M/S.T.Ravichandran, Advocate Sr.29051

+1cc to M/S.A.K..Kaithamalai kumaran, Advocate Sr.29021

C.M.A.No.2863 of 2011

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srg 29/05/2018

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