

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2592 of 2016

M.Annapoorani

...Appellant/Petitioner

vs

1.Anand Muthukumar

2.M/s.ICICI Lombard General Insurance Co.Ltd.,
"Arihant Plaza" 1st Floor
No.84 and 85, Wall Tax Road
Chennai-600 003

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 11.03.2016 made in M.C.O.P.No.2902 of 2011 on the file of Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.

For appellant : : Mr.T.G.Balachandran
for Respondents : : Ms.R.Sreevidhya for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 11.03.2016 made in M.C.O.P.No.2902 of 2011 on the file of Motor Accident Claims Tribunal, V Judge, Small Causes Court, 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 25.04.2011 at 9.40 a.m., when the petitioner was going in her scooty bearing Reg.No.TN-18-1444 towards Tambaram, in Maduravoyal to Tambaram Bypass Road, near Thiruneermalai Srinivasapuram, a Honda City Car bearing Reg.No.TN-22-BM-2436, belonging to the 1st respondent and insured with the 2nd respondent, came behind the Scooty and driven in a rash and negligent manner, hit the petitioner, resulting in the Petitioner sustaining multiple injuries including head injury to her. The Petitioner, in her claim Petition, averred that at the time of the accident, she was aged 25 years and by working as Senior Software Engineer was earning Rs.50,000/- per month. Due to the injury suffered by her, she could not attend to her work

as she used to and hence suffered loss of income. The Petitioner sought total compensation of Rs.10,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the petition, by filing counter, the 2nd respondent/Insurance Company denied the claim of the Petitioner that she was injured in the accident involving Honda City car bearing Reg.No.TN-22-BM-2436. The 2nd respondent denied the alleged traffic accident on 25.04.2011 and also stated that the policy issued for the period 03.11.2010 to 02.11.2011 does not cover the accident. The 2nd respondent states that as there was no policy coverage on the date of the accident, they are not liable to pay any compensation. The 2nd respondent also denied the involvement of the said car in the accident as claimed by the injured petitioner. The claim of the Petitioner about her age, avocation and income is also disputed. The Petitioner's claim that the accident occurred due to the negligence of the 1st respondent car driver is denied. The claim of the petitioner is very exorbitant. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined herself as P.W.1 and the medical expert as P.W.2. The Petitioner also produced Ex.P.1 to Ex.P.20 documents to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials placed before it, found that the 1st respondent car driver's negligence alone caused the accident and held that the respondents are jointly and severally liable to pay the compensation to the Petitioner. Further, the Tribunal, by discussing the age, avocation and other aspects, granted 5,12,500/- to the Petitioners for the injuries suffered by her. Being not satisfied with the quantum of the Award, the Petitioner/injured claimant has come forward with the present Appeal.

5. The learned counsel for the Appellant/Petitioner contended that the Tribunal fixed the disability very low and also awarded less amount for the partial permanent disability suffered by her. The Tribunal also failed to consider the fact that the petitioner's marital life has been affected due to the injury suffered by her. The amount awarded under various heads is very nominal. The counsel for the Appellant/Petitioner seeks to enhance the quantum of award by allowing this appeal.

6. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal has correctly appreciated the evidence and other documents placed before it and awarded just and fair compensation to the

Petitioner and therefore, there is no need of interference. Hence, the 2nd respondent seeks dismissal of the Appeal.

7. The Petitioner who is a Senior Software Engineer by Profession deposed that on 25.04.2011, while she was proceeding in her two wheeler, the Honda City Car bearing Reg.No.TN-22-BM-2436 came at high speed and dashed against her. She also produced copy of FIR registered against the driver of the said car as Ex.P.1 and the Rough Sketch of the accident spot as Ex.P.2. It is clear from the oral evidence of P.W.1 and Ex.P.1 FIR that the 1st respondent car driver alone caused the accident, due to his negligence. To disprove the claim of the Petitioner, the 1st respondent did not let in any oral or documentary evidence. The driver of the 1st respondent car has not come forward to depose before the court as to the manner in which the accident took place. Nothing is extracted in the cross examination of P.W.1 to discredit the Petitioner's version of accident. The Petitioner has also produced copy of her Driving Licence in Ex.P.8. It is therefore clear that the petitioner, who is entitled to ride two wheeler and possessing valid driving licence met with the accident and only due to the rash and negligent driving of the 1st respondent vehicle driver, the accident occurred.

8. The Petitioner states that she was aged 25 years and was employed in the Private Software Company, earning Rs.50,000/- per month. The Petitioner produced Ex.P.16-Qualification Certificates, Ex.P.7-Pay Slips, Ex.P.12-TDS details under Form 16A and Ex.P.14-Tax Assessment Form 16 and Ex.P.15-Xerox copy of PAN Card. While the Petition averments state that her monthly income is Rs.50,000/-, in her oral evidence, Petitioner as P.W.1 stated that she was getting Rs.95,000/- per month and she was not able to attend to her work for three months after the accident. It is clear from Ex.P.7 Pay Slips that the Petitioner received Rs.95,461/- for the month of March 2011. As stated above, the Petitioner has produced her Tax Assessment form and TDS Details. On the basis of the said materials, the Tribunal fixed the monthly income of the Petitioner at Rs.90,000/-, which in the considered opinion of this court, is just and proper.

9. The Petitioner stated that she suffered injury in her head, abrasion in the left foot and other multiple injuries. She further stated that she underwent treatment as inpatient in Life Line Multi Speciality Hospital from 25.04.2011 to 03.05.2011 and thereafter, took treatment as out-patient. She produced her discharge summary as Ex.P.3, Taking into consideration the nature of injuries suffered by her and the claim of the Petitioner that she was unable to work for three months and suffered loss of income, the Tribunal calculated the loss of income for a period of 3 months as treatment period and

awarded Rs.2,70,000/- (Rs.90,000/- x 3 = Rs.2,70,000/-) under the head loss of earning during the period of treatment, which, in the considered view of this court is also just and acceptable.

10. It is stated by the Petitioner in her claim Petition that she suffered multiple grievous injuries. P.W.2 doctor who assessed her disability while deposing before the Tribunal stated about the head injury/Temporal Lobe contusion on left side suffered by the Petitioner. P.W.2 also fixed the disability at 45% under disability certificate Ex.P.17. Further, the Petitioner produced CT Scan report as well as report of Psychologist under Ex.P.18 to Ex.P.20. Admittedly, P.W.2 did not give treatment to the Petitioner and has not filed any calculation sheet along with Ex.P.17 disability certificate. In such circumstances, taking into account the claim of the Petitioner that she is unable to do her regular work and other attendant circumstances, the Tribunal fixed the disability suffered by her at 30%. The learned counsel for the Appellant/Petitioner contended that being a software Engineer and suffered head injury, she is not able to concentrate in her work and getting head ache as well as pain in the eyes. Considering the same, this court is of the view that it will be appropriate to fix disability suffered by her at 40% instead of 30% fixed by the Tribunal. Accordingly, for the disability fixed at 40%, the compensation towards Partial Permanent disability, is calculated as under:-
 $40\% \times 3000 = \text{Rs.}1,20,000/-$.
Thus, a sum of Rs.1,20,000/- is awarded under the head "disability".

11. The learned counsel for the Appellant/Petitioner contended that the Petitioner's marriage took place on 16.02.2011 and subsequently she met with an accident on 25.04.2011 and due to the injuries suffered by her, she was deserted by her husband during May 2011. The Petitioner also stated that the Marriage has been dissolved by mutual consent as per the order dated 28.02.2013 passed in O.P.No.2851 of 2012. The said copy of the order is filed before this court under Ex.P.21 as additional document vide order of this court dated 31.01.2018. According to the Petitioner, the injury suffered by her in the accident is also mentioned as a cause for the divorce. The learned counsel thus sought for some amount as compensation for the loss of marital life due to the head injury suffered by the Petitioner. On the other hand, learned counsel for the 2nd respondent contended that even though as per Ex.P.21 divorce by mutual consent is given, the alleged injury of the Petitioner is not mentioned as a ground for divorce, and as such, there is no need to grant any amount towards loss of marital life for the Petitioner.

12. Taking note of the submission made on both sides and in view of the facts placed before this court that Marriage of the Petitioner took place on 16.02.2011 and the accident occurred on 25.04.2011 and that the petitioner was deserted by her husband from May 2011 and the petition for divorce filed in O.P.No.2851 of 2012, on mutual consent, was allowed on 28.02.2013, this court is inclined to grant Rs.20,000/- under the head "loss of marital life".

13. Further, this court also deems it fit to enhance the amount awarded under the head "Pain and suffering" at Rs.75,000/- instead of Rs.50,000/- granted by the Tribunal and also Rs.5,000/- under the head Attender Charges as against Rs.1,800/- awarded by the Tribunal. Thus, the modified amount award granted by this court is as under:-

Sl. No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Transportation, nourishing food, and miscellaneous expenditure	Rs.25,000/-	Rs.25,000/-
2	Attender charges	Rs.1,800/-	Rs. 5,000/-
3	Medical expenses	Rs.11,096.90	Rs. 20,000/-
4	Disability	Rs.90,000/-	Rs.1,20,000/-
5	Loss of earning during the period of treatment	Rs.2,70,000/-	Rs.2,70,000/-
6	Damages for pain, suffering and trauma	Rs.50,000/-	Rs.75,000/-
7	Damages for vehicle	Rs.14,237/-	Rs.15,000/-
8	Loss of amenities	Rs.50,000/-	Rs.50,000/-
9	Loss of marital life	---	Rs.20,000/-
	Total	5,12,500/-	Rs.6,00,000/-

14. In the result, the Civil Miscellaneous Appeal filed by the Appellant/claimant is Partly allowed with cost. The modification of the award is as follows:-

- (1) The award granted by the Tribunal is enhanced to Rs.6,00,000/- from Rs.5,12,500/-;
- (2) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(3) The 2nd respondent-Insurance company is directed to deposit the modified enhanced award of Rs.6,00,000/- along with proportionate accrued interest and costs, from the date of petition till the date of deposit, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(4) On such deposit, the Appellant/Petitioner is entitled to withdraw the amount awarded by this court along with accrued interest, by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.T.G.Balachandran, Advocate Sr.No.13421/18

GP(CO)
sm:11.5.2018

C.M.A.No.2592 of 2016

सत्यमेव जयते

WEB COPY