

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3064 of 2011

Smt.B.Vijaya

... Appellant/Petitioners

...VS...

1.S.Mahesh

2.New India Assurance Co. Ltd.,
No.80, Arcot Road, Porur,
Chennai-87.

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal order dated 29.07.2010 made in MCOP.No.3948 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai.

For Appellants : Mr.N.Veerasamy
For Respondents : Mr.K.Vinod for R-2
R1-Exparte

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 29.07.2010 made in MCOP.No.3948 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai, the petitioner/claimant have come forward with this present appeal seeking to enhancement of the 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 21.08.2007 at about 5.50 a.m., while the petitioner was travelling as a pillion rider in the two wheeler with her father in the G.S.T. Road, on the way from Guindy to Mandaveli, a Mini Lorry bearing Registration No.TN-10-R-0807 came at high speed dashed against the motor cycle driven by the father of the petitioner from behind causing

her grievous injuries all over the body. The accident occurred only due to the negligence of the driver of the first respondent vehicle. The petitioner claims that she was aged about 21 years at the time of the accident and by working as Project Engineer in a private company was earning a sum of Rs.5,500/- per month. She has suffered fracture in his right hand and also grievous injury in his head. Due to the same, she is unable to attend to her regular work resulting in loss of income to her. Thus, the petitioner sought for a sum of Rs.15,00,000/- 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 second respondent-Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner is exorbitant. The claim of the petitioner about her age, avocation and income is denied. The accident occurred only due to the negligence of the rider of the motor cycle who drove the motor cycle in a zigzag manner and that too in the middle of the road inviting the accident. As such, the second respondent Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and two medical experts as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P13 to prove her claim. On the side of the respondents, no oral evidence was let in, but Ex.D1 Accident Register alone produced.

6. The Tribunal, after analysing the evidence available on record found the negligence on the part of the first respondent vehicle driver alone caused the accident and passed an Award for a sum of Rs.2,39,600/- as compensation to the petitioner. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward this present appeal seeking to enhance the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant/petitioner and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellant/petitioner contended that the Tribunal failed to consider the nature of injuries suffered by the petitioner who was aged about 21 years old at the time of the accident and awarded very nominal amount as compensation. The Tribunal instead of fixing the disability at 100% without any basis reduced the same to 85%. The amount awarded by the Tribunal under different heads are very low. Thus, the petitioner sought

for enhancing the award amount by allowing the appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the nature of injuries suffered by the petitioner does not cause any functional disability and as such the petitioner is not entitled to seek for enhancing the quantum of compensation. Thus, the second respondent-Insurance Company sought for dismissal of this appeal.

10. This appeal is filed only against the quantum of compensation awarded by the Tribunal. The negligence aspect is not seriously disputed by either side. The petitioner who deposed as P.W.1 clearly stated that the accident occurred only due to the negligence of the first respondent vehicle driver. According to P.W.1, while she was going as a pillion rider in the two wheeler driven by his father, the first respondent Mini Lorry bearing Registration No.TN-01-R-0807 came at high speed and dashed against their two wheeler causing fatal injuries to her father as well as causing grievous injuries on her. The police also registered the case against the driver of the said mini lorry only, as evidence by Ex.P1 copy of First Information Report. It is therefore clear from the evidence of P.W.1 as well as the contents of Ex.P1 First Information Report that the negligence of the first respondent vehicle driver alone caused the accident. Further, there is no contra evidence let in by the respondents to disprove the claim of the petitioner. Neither the driver of the first respondent vehicle nor any other person was examined by the respondents to disprove the petitioners claim. As such, it is clear that the negligence of the first respondent's vehicle driver alone caused the accident. The petitioner claims that the offending vehicle belongs to the first respondent and the same was insured with the second respondent and the same is not disputed. The respondents are liable to pay compensation to the petitioners.

11. The petitioner who deposed as P.W.1 clearly stated about the injuries suffered by her. According to her, she suffered fracture in the right hand and also injury in her head. After taking treatment in the Balaji Hospital, Chennai, she was shifted to Government Hospital, Chennai and thereafter she was admitted in Isabellah Hospital, Chennai for treatment. She was treated as inpatient from 21.08.2007 to 14.09.2007. The petitioner has produced Admission Card issued by the Balaji Hospital as Ex.P2. The Discharge Summary issued by the Government Hospital, Chennai and Isabellah Hospital, Chennai is produced as Ex.P3 and Ex.P4 respectively.

12. The petitioner was examined the Doctor who deposed as P.W.2 to prove the disability suffered by her. P.W.2 clearly stated that due to the fracture suffered in the right upper arm, the movement of the petitioner shoulder is reduced by 20%. P.W.2 assessed the disability suffered by the petitioner at 30% and issued Ex.P11 Disability Certificate. The X-ray and photos taken about the injuries suffered by the petitioner is produced as Ex.P9 and Ex.P10. Likewise, the other Doctor who examined the petitioner and assessed the disability suffered by the petitioner deposed as P.W.3 and after going through the scan report and other medical records produced as Ex.P13. The said P.W.3 Doctor assessed the disability suffered by the petitioner at 70%. The Tribunal keeping in mind the evidence of both the Doctors fixed the disability suffered by the petitioner at 85%. This, the petitioner contends is not proper and sought for fixing the disability at 100%. The said contention of the petitioner is unsustainable. The Doctors who assessed the disability suffered by the petitioner have not treated the petitioner. Further, no calculation sheet was enclosed with the disability certificate issued by them. It is also pointed out that only one X-ray was produced by the petitioner and the same will not cover both the injuries. Further, it is only over all functional disability that is to be taken into consideration. In the case on hand, P.W.2 and P.W.3 have only assessed the disability of particular organs and not for the whole body. The petitioner who claims herself to be employed as Project Executive in a Private Company has not let in any evidence to prove that she suffered any loss of income or any disadvantage in the nature of her employment. There is nothing on record to show that the petitioner has suffered functional disability. As such, keeping in mind the evidence of P.W.2 and P.W.3 Doctors, it will be appropriate to fix the disability suffered by the petitioner at 50% instead of 85% fixed by the Tribunal. Considering the age of the petitioner was only 21 years and the period of treatment undergone by her and the nature of injuries suffered, it will be appropriate to compensate her at the rate of Rs.3000/- per percentage instead of Rs.2,000/- provided by the Tribunal. Thus, the disability compensation is calculated as follows. $\text{Rs.3,000/-} \times 50\% = \text{Rs.1,50,000/-}$.

13. As the petitioner has undergone treatment as inpatient from 21.08.2007 to 14.09.2007 and suffered fracture and head injuries, she would have suffered physical pain and mental agony, as such she is entitled for a sum of Rs.50,000/- as compensation towards pain and sufferings instead of Rs.35,000/- provided by the Tribunal. As per the medical bills produced as Ex.P7 series, medical expenses of Rs. 3,800/- has been incurred by the petitioner. Keeping in mind the injuries suffered, it will be appropriate to provide her a sum of Rs.5,000/- towards

medical expenses instead of Rs.3,800/- awarded by the Tribunal. Similarly, a sum of Rs.5,000/- is provided for Transportation charges. Admittedly, the petitioner having taken treatment as inpatient for nearly one month and thereafter took treatment as outpatient, she would not have attended to his normal work at least for four months. As she was stated to be earning a sum of Rs.5,500/- per month, it will be appropriate to provide for her loss of income for four months. Thus, the loss of income during treatment period is calculated as follows. Rs.5,500/- x 4 = Rs.22,000/-. Similarly, considering the nature of injuries suffered by her and also considering the treatment taken by her, it will be appropriate to provide for a sum of Rs.15,000/- towards loss of amenities.

14. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	1,70,000.00	1,50,000.00
2.	Pain and sufferings	35,000.00	50,000.00
3.	Loss of income during treatment period	25,000.00	22,000.00
4.	Medical Expenses	3,800.00	5,000.00
5.	Transportation	3,000.00	5,000.00
6.	Damage to Cloths	300.00	500.00
7.	Extra-nourishment	2,500.00	5,000.00
8.	Loss of amenities	-	15,000.00
	Total	2,39,600.00	2,52,500.00

Accordingly, the quantum of compensation awarded by the Tribunal is modified and the same is enhanced to Rs.2,52,500/-.

15. In the result, the civil miscellaneous appeal is partly allowed. No costs. The amount of Rs.2,39,600/- awarded by the Tribunal dated 29.07.2010 made in MCOP.No.3948 of 2007 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.I, Chennai, is hereby enhanced to Rs.2,52,500/-. The second respondent Insurance company is directed to deposit the entire award amount of Rs.2,52,500/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit the 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 appellant is permitted to

withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rrg

To
The Additional District Judge,
Fast Track Court No.I,
Chennai.

+1cc to Mr.K.VINOD, Advocate, S.R.No.32489
+1cc to Mr.N.VEERASAMY, Advocate, S.R.No. 32417

C.M.A.No.3064 of 2011

SSD(CO)
TR(02/08/2018)



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