

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1833 of 2017
and
CMP.No.9863 of 2017

The United India Insurance Co. Ltd.,
Salem- 636 007. Appellant/2nd respondent

...vs...

1.Palaniammal 1st Respondent/Petitioner
2.V.S.Babu 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 26.07.2016 made in MCOP.No.59 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge),Salem.

For Appellant : Mr.J.Chandran
Respondent : Mr.S.P.Yuvaraj for R1
R2 NA

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 26.07.2016 made in MCOP.No.59 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge),Salem, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

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 04.11.2013, while the petitioner was standing near Dalmia Board Bus stop in Salem - Dharmapuri National High Way, at about 18.00 hours, the first respondent car bearing Registration No.KA-04-Z-2398 came in the reverse direction in a rash and negligent manner dashed against the petitioner causing her fracture in left leg, pelvic, left hand, left chest rib 5 to 7 and multiple injuries all over the body. After the accident, the petitioner was given first aid in

Government Hospital Salem and thereafter admitted in Kurunchi Hospital, Salem. The accident occurred due to the negligence of the first respondent driver only. The petitioner was aged 35 years and working as an agricultural coolie was earning a sum of Rs.10,000/- per month. Due to the injuries suffered, the petitioner finds difficulty even to walk without help of other persons. Due to the chest injury, she finds it difficult to for breath normally. 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 by filing counter contends that the nature of injury suffered, age, avocation and income of the petitioner is denied. The place of accident, date and time and manner of the accident as alleged by the petitioner is not admitted. The accident occurred only due to the negligence of the petitioner, who suddenly crossed the road and met with the accident. The petitioner has to prove that the driver of the first respondent vehicle possessed valid driving licence and the said vehicle was insured with the second respondent Insurance Company. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and medical expert as P.W.2, produced documents Ex.P1 to Ex.P12 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 driver alone caused the accident, passed an award for a sum of Rs.7,75,800/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal ought to have held that the accident occurred only due to the negligence of the petitioner/claimant. The Tribunal failed to consider that Ex.P1 was filed one day after the accident. The delay will clearly prove that the case was falsely registered against the first respondent vehicle driver. The Tribunal ought to have disbelieved the medical expert evidence and rejected the disability certificate issued by him. The Tribunal wrongly

fixed the whole body disability at 40% and the same is highly excessive. The amount provided under different heads is on the higher side. Thus, the appellant-2nd respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the petitioner/ claimant contends that having suffered permanent disability, the petitioner is unable to attend to her normal work. The petitioner is entitled for higher compensation then awarded by the Tribunal. The appeal has no merits and there is no ground to interfere with the Award passed by the Tribunal. Thus, the petitioner/claimant sought for dismissal of the appeal.

10.The petitioner who deposed as P.W.1 clearly stated that while he was standing in the bus stop, the first respondent vehicle driver overtook the bus on the left side and dashed against the petitioner who was standing in the bus stop. The police also registered Ex.P1 First Information Report against the driver of the first respondent vehicle only. The contents of Ex.P1 First Information Report clearly corroborates the version given by P.W.1. To contradict the same, the respondents have not examined any witness and even the driver of the first respondent has not come forward to depose before the Tribunal. Assuming that the accident occurred due to the negligence of the petitioner, the driver of the first respondent vehicle would have lodged the complaint against the petitioner, but, no such complaint was given. There is no evidence available on record to prove that the petitioner tried to cross the road without noticing the on coming vehicle and met with the accident. In such circumstances, the conclusion of the Tribunal that the negligence of the first respondent car driver alone caused the accident is based on proper appreciation of the evidence on record and the same needs no interference.

11.The petitioner states that she was aged 35 years and by working as agricultural coolie was earning a sum of Rs.10,000/- per month. Even though the petitioner did not produce any document to prove her age, as per Ex.P13 Accident Register Copy, she was stated to be 35 years old at the time of the accident. Thus, her age is fixed as 35 years. As the petitioner was working as agricultural coolie, the Tribunal fixed her notional income at Rs.6,000/- per month and the same is appropriate.

12.The petitioner stated that she suffered fracture in her left leg and the chest bone 4 to 6 were also fractured. The petitioner also suffered head injury and plate was fixed in her leg to unit the broken bones. According to the petitioner, she is unable to do any work. To prove the injuries suffered by her, the petitioner produced Ex.P3 Accident Register copy and

also Ex.P4 Progress Report. The said documents were issued by the Kurinchi Hospital, Salem. It is clear from the same, that the petitioner has suffered fracture in two bones, comminuted fracture of both bone leg with bilateral superior and inferior pubic rami with fracture sacrum. The petitioner also stated that she underwent treatment as inpatient over different periods and the same was established by Ex.P5 to Ex.P7. The petitioner underwent treatment in Government Hospital, Salem from 06.11.2013 to 09.01.2014 and again from 12.11.2014 to 18.12.2014 and thereafter from 20.01.2016 to 07.03.2016 as inpatient. It is evident from the documents that the petitioner underwent surgical treatment on five occasions. The injuries suffered by her is grievous in nature, as evidenced by Ex.P2 wound certificate. It is clear from Ex.P9 photos that for the fracture suffered in the left leg, screw has been fixed by surgical treatment. The petitioner also stated that the Tibia and fibula bones in the left leg is broken causing her permanent disability.

13. The Doctor who deposed as P.W.2 stated that he examined the petitioner physically and also took Ex.P12 X-ray to assess the disability suffered by her. According to P.W.2, the Tibia and Fibula bones in the left leg of the petitioner was shattered. He further stated that the plate has been fixed in the petitioner's left leg and skin crafting was also done. According to P.W.2 Doctor, the petitioner will find it difficult to walk normally, sitting down, cross legged and in claiming staircase. Thus, P.W.2 assessed the disability suffered by the petitioner at 56.98%. The disability certificate issued by him is produced as Ex.P11. Nothing is elicited during the cross examination of P.W.2 to disbelieve or discredit his evidence. Further, there is no contra evidence let in by the respondents to disprove the same. Thus, it is clear from the evidence of P.W.1 as well as P.W.2 Doctor that the petitioner has suffered 56.98% permanent disability.

14. Being an agriculture coolie, the petitioner will not be able to carry on her avocation. Further, the petitioner suffered earning capacity and suffering from the functional disability. As such, the Tribunal, considering the evidence on record, fixed the functional disability at 40% and she being aged 35 years, adopted the multiplier 16 to assess the loss of income. Having fixed the notional income at Rs.6000/-, the Tribunal provided for loss of earning capacity as follows:-

$$\text{Rs.6000/-} \times 12 = \text{Rs.72,000/-} \times 16 = \text{Rs.11,52,000/-} \times 40 / 100 = \text{Rs.4,60,800/-}.$$

The said amount provided by the Tribunal is appropriate, just and proper.

15. As stated earlier, the petitioner under went 5 surgeries and also took treatment as inpatient for the length of time at various periods as stated above. Having suffered fracture in her leg and also head injury, the pain and sufferings under gone by the petitioner will be heavy and as such providing Rs.50,000/- by the Tribunal is proper. Similarly, the Tribunal, on the basis of Ex.P8 and Ex.P10 Medical Bills, provided Rs.57,500/- towards medical expenses and the same is not disputed by the respondents. Considering the fact that the petitioner is still under gone treatment, the plate and screw fixed in the left leg are not yet removed. The petitioner will need to future treatment as stated, the Tribunal provided Rs.30,000/- towards future medical expenses and the same is appropriate, just and proper.

16. Keeping in mind, the petitioner under went treatment as inpatient for over a period of time, the Tribunal is justified in providing 6 months income towards loss of income during treatment period. The amount provided by the Tribunal under different heads is appropriate and the same is not seriously disputed by the respondent. As stated above, as the negligence of the first respondent vehicle driver alone caused the accident and the petitioner has suffered multiple fracture resulting in loss of earning capacity and in fact the petitioner is not able to do any work, the amount provided by the Tribunal under the different heads is very nominal and award passed is just and proper. The respondents have not made out any ground to interfere with the quantum of award or negligence fixed on the respondents. Thus, the appeal preferred by the second respondent Insurance Company has no merit and the same has to fail. The point is answered accordingly.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The Order and decreetal order dated 26.07.2016 passed by the learned Special Sub Judge, Salem in M.C.O.P.No.59 of 2014 is hereby confirmed. Consequently, connected M.P. is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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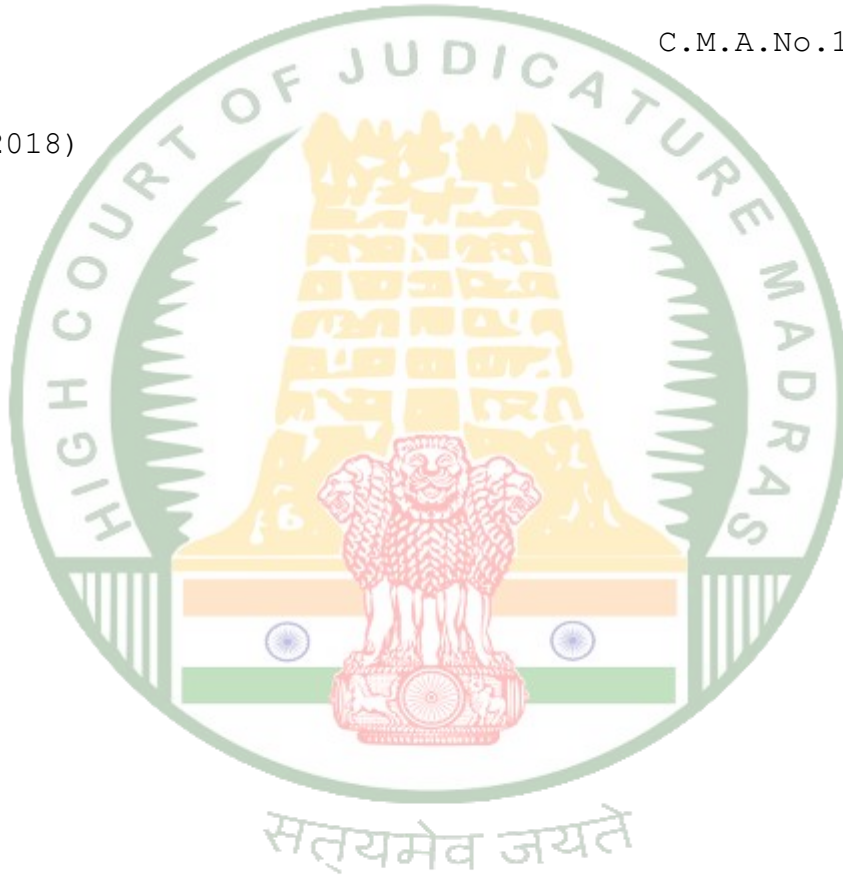
1. Special Sub Judge,
The Motor Accident Claims Tribunal,
Salem.

2. The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.J. Chandran, Advocate sr 43646.

C.M.A.No.1833 of 2017

KJI (CO)
SP(14/08/2018)



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