

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Civil Miscellaneous Appeal No.251 of 2018

Uma Maheswari

.. Appellant/Petitioner

.Vs.

1. A.Francis Xavier

2. ICICI Lombard General Insurance Company Ltd,
No.140, Nungambakkam High Road,
Chennai - 34.

.. Respondents/Respondents

Prayer :Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act-1988, against the decree and judgment dated 30.01.2015 made in MCOP No.2638/13 on the file of Motor Accident Claims Tribunal(III Small Causes Judge) Chennai.

For Appellant : Mr.K.Vardha Kamaraj

For Respondent : Mr.R.Sree Vidhya for R2

J U D G M E N T

The petitioner/appellant has preferred this memorandum of Civil Miscellaneous appeal against the decree and Judgment dated 30.01.2015 made in M.C.O.P.No.2638 of 2013 dated 30.01.2015 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case of the petitioner is that on 22.12.2012 at about 16.30 hours when the petitioner was travelling along with another person in Mahalingapuram Main Road in a car bearing Regn No.TN-22-AS-4567 insured with the 2nd company/Insurance company, when they approached near the Brown Stone Apartment, Nungambakkam, Chennai, the driver of the vehicle suddenly applied brake to avoid colluding with a two wheeler and it dashed against electric post, as a result of which, the petitioner sustained fracture and multiple injuries. According to the petitioner, the

accident occurred only due to the negligence of the 1st respondent car driver. The petitioner claims that the negligence on the part of the car driver is the cause for the accident. At the time of accident the petitioner was aged about 30 years and by carrying on saree sales business, she was earning a sum of Rs.6,000/-per month. Due to injuries suffered she is unable to carry on the business, which she used to do Therefore the petitioner seeks a compensation of Rs.3,00,000/- from the respondents, viz., the owner and insurer of the vehicle.

3. On the other hand, the learned counsel for the 2nd respondent contends that the vehicle bearing Regn No.TN-22-AS-4567 was not involved in the accident as alleged by the petitioner. The nature and manner of the accident as alleged by the petitioner is not correct. Even as per the allegations of the petitioner, there is no negligence on the part of the driver of the Car bearing Reg No.TN-22-AS-4567. The claim of the petitioner and the calculation of the income by the Tribunal is not correct. Thus, the 2nd respondent/Insurance company sought for dismissal of the petition.

4.Before the Tribunal, the petitioner examined P.W.1 to 3 and produced documents Ex.P.1 to Ex.P.12 to prove her claim. However, on the side of the respondents, neither oral nor documentary evidence was let in. On the basis of available evidence, the Tribunal found that due to the negligence of the first respondent car driver, the accident had occurred and awarded a sum of Rs.1,35,500/- as compensation to the petitioner.

5. Not being satisfied with the quantum of the award, the Appellant/petitioner has come forward with the appeal.

6. The learned counsel for the appellant/petitioner contends that the Tribunal fixed the disability suffered by the petitioner at 30% instead of 40% as assessed by the Doctor. The Tribunal also failed to award sufficient compensation in respect of expenses incurred on account of medical expenses. The Tribunal has also erred in fixing the amount under the head "loss of earning". Hence the petitioner/appellant seeks enhancement of the quantum of award, by allowing the appeal.

7. Per Contra, learned counsel for the 2nd respondent/Insurance company contends that based on the available materials on record the Tribunal has correctly assessed the disability, awarded just and proper compensation and there is no need to interfere with the same. Thus, the 2nd respondent/Insurance company seeks dismissal of the appeal.

8.Heard both sides and perused the materials available on

records.

9. Based on the evidence of P.W.1, P.W.2 and Ex.P.1-Copy of FIR, the Tribunal concluded that the driver of the 1st respondent's car bearing Reg.No.TN-22-AS-4567 was the sole cause for the accident. In the absence of any contra evidence, this Court is of the view that the said conclusion arrived at by the Tribunal is just and proper and the same is confirmed.

10. The main contention of the petitioner/claimant is that though the Tribunal has rightly assessed the disability suffered by the petitioner, awarded lesser amount as compensation. The petitioner, who is PW-2, has stated that she took treatment at Government Hospital in Royapettah as inpatient and also as out patient. Ex.P4 is the Accident Register copy and Ex.P5 is the OP chit issued by Government Royapettah Hospital. It is evident from Ex.P6 Discharge summary that the petitioner took treatment a inpatient and out patient in Government Hospital, Royapettah, from 22.12.2012 to 7.01.2013. It is also evident that the petitioner suffered fracture in humerus lower 1/3rd right and open reduction and internal fixation was done.

11.The Doctor who examined the petitioner and assessed the disability suffered by petitioner, when deposing as P.W.3 clearly states that the petitioner is suffering with continuous pain in her right shoulder and movement of the shoulder is restricted. P.W.3/doctor assessed the disability suffered by the petitioner at 40%. However, P.W.3 admits that he has not treated the petitioner. Further PW3 has not given any calculation sheet along with Ex.P-11 disability certificate issued by him. As such, the Tribunal while considering the nature of injuries suffered by the petitioner and on the basis of expert evidence of P.W-3, fixed the permanent disability suffered by the petitioner at 30%. Hence, this Court is of the view that the Tribunal has rightly assessed the permanent disability of the petitioner at 30% and the same needs no inference. The Tribunal assessed the compensation disability suffered by the petitioner at the rate of Rs.2,000/- and awarded Rs.60,000/- towards disability compensation. This the Petitioner contends is inappropriate and seeks to enhance the same. The said contention is to be accepted. Hence, taking into consideration the fact that the accident occurred in 2012 and the nature of disability suffered by the Petitioner/appellant, this Court is of the view that it would be appropriate to asses the compensation for the disability suffered by the petitioner at Rs.3,000/- per percentage instead of Rs.2000/- fixed by the Tribunal. Accordingly, the disability compensation is calculated as follows:-
$$\text{Rs.3000/-} \times 30\% = \text{Rs.90,000/-}.$$

12. The petitioner has suffered fracture and injuries and

had taken treatment in Government Hospital. In such circumstances, it is clear that the petitioner would have needed the assistance of another person to move around especially during the period of treatment. Hence, this Court is of the view that some amount has to be awarded towards "Attendant charges" which the Tribunal has failed to do. Hence, for "Attendant charges", a sum of Rs.10,000/- is awarded.

13. Considering the overall materials on record, this Court finds that the amount awarded by the Tribunal under other heads are just and reasonable and the same is confirmed. For the above said reasons, the award passed by the Tribunal is modified as follows.

Sl.No	Heads	Amount granted by the Tribunal (Rs./-)	Amount awarded by this Court (Rs./-)
1	Loss of earnings	Rs.15,000	Rs.15,000
2	Transport to Hospital	Rs.5,000	Rs.5,000
3	Extra nourishment	Rs.5,000	Rs.5,000
4	Damage to clothing	Rs.500	Rs.500
5	Medical Expenses	Rs.5,000	Rs.5,000
6	Loss of amenities	Rs.15,000	Rs.15,000
7	Pain and suffering	Rs.30,000	Rs.30,000
8	Disability	Rs.60,000	Rs.90,000
9	Attendant Charges	-	Rs.10,000
	Total	Rs.1,35,500	Rs.1,75,500

14. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.1,75,500/- from Rs.1,35,500/-
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above enhanced award amount, the second respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of four weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. As per the order of this Court dated 06.01.2018 passed in CMP.No.8840/2017 in CMA.SR.No.41004 of 2017, interest is waived off for the delay of 746 days in filing the appeal. The Tribunal shall pass appropriate

directions for the disbursal of the amount as stated supra
on the filing of such application.
(v) There will be no order as to costs in this appeal.

(vi) The appellant/claimant shall pay the additional court fee
for the enhanced award amount, before obtaining copy of the
decree.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

smn/nvsri

To.

1.The Motor Accident Claims Tribunal (III Small Causes Judge)
Chennai.

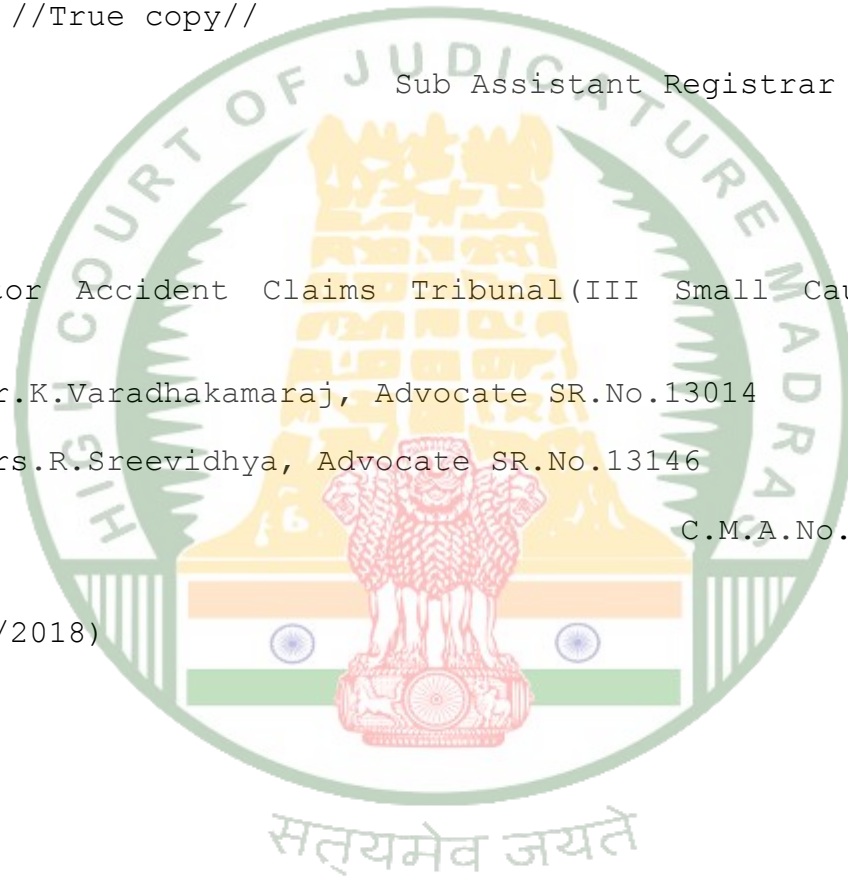
+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.13014

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.13146

C.M.A.No.251 of 2018

SSI (CO)

GMV (14/11/2018)



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