

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.326 of 2018

S.Anusiya

...Appellant/Petitioner

vs

1.A.Francis Xavier

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

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 30.01.2015 made in M.C.O.P.No.2637 of 2013 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For appellant : : Mr.K.Varadha Kamaraj
for Respondents : : Mrs.R.Sree Vidhya for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the judgment and decree dated 30.01.2015 made in M.C.O.P.No.2637 of 2013 on the file of Motor Accident Claims Tribunal, III 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 22.12.2012 at 16.30 hours, while the petitioner was travelling as passenger in the car bearing Reg.No.TN-22-AS-4567, the driver of the car while taking the turn to the right side, met with the accident near Brownstone Apartment, Mahalingapuram Main Road, Nungambakkam, Chennai, and the petitioner suffered multiple grievous injuries. As the accident occurred due to rash and negligent driving by the driver of the said car, the Petitioner seeks compensation from the respondents who are the owner and insurer of the car, in which the Petitioner was travelling. The Petitioner claims that she was aged 60 years and from her self-employment was earning Rs.6000/- per month. Due to the injury suffered by her, she is not able to attend to her avocation and suffered loss of income.

Thus the petitioner seeks a sum of Rs.3,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent contends that the accident did not occur in the manner alleged by the Petitioner. The vehicle bearing Reg.No.TN-22-AS 4567 was not involved in the accident and the said vehicle was operating without valid permit and fitness certificate. The Petitioner as well as the driver of the vehicle are family members and the petitioner has suppressed the same. As per the averments in the Petition itself, it is stated that in order to avoid collision with a two wheeler going ahead of the car, the driver of the vehicle applied brake and dashed against the lamp post resulting in the accident, as such, the driver of the Car bearing Reg.No.TN-22-AS-4567 cannot stated to be negligent and the Petitioner is not entitled to seek compensation from the Petitioners. The averments of the Petitioner about the age, avocation and income of the deceased is denied. Thus, the 2nd respondent seeks dismissal of the Petition.

4. Before the Tribunal, joint trial was conducted including the present MCOP.No.2637 of 3013 along with 2638 of 2013. The Petitioner examined P.Ws.1 to 3 and produced documents Ex.P.1 to P.12 to prove their claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The 1st respondent remained exparte. On the basis of available evidence on record, the Tribunal found that the driver of the 1st respondent car alone is responsible for the accident and directed the respondents 1 and 2 to pay compensation of Rs.1,35,500/- to the Petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

5. The learned counsel for the Petitioner contends that the Tribunal was wrong in reducing disability fixed at 45% by the doctor to 30% without any valid reason. The amount awarded under different heads by the Tribunal is on the lower side. The Tribunal failed to provide any amount towards future medical expenses and attender charges. Thus, the Petitioner seeks to enhance the quantum of the Award by entertaining the present appeal.

6. Per contra, the learned counsel for the 2nd respondent contended that the accident did not occur due to the negligence of the 1st respondent vehicle driver. As such, the petitioner is not entitled to seek any compensation from the respondents. The Tribunal has passed award without appreciating the evidence properly and the quantum fixed by the Tribunal is on the higher side. Thus, the 2nd respondent seeks dismissal of the appeal.

7. The Petitioner who deposed as P.W.1 clearly stated that the driver of the car in which she was driving, while turning the road near Brown stone Apartment, Nungambakkam, in order to avoid collision with a two wheeler proceeding ahead of the car, suddenly applied brake, lost control, and dashed against the lamp post resulting in the accident. The Police registered the case in Ex.P.1-FIR against the driver of the offending car bearing Reg.No.TN-22-AS-4567. Thus the eyewitness account of the occurrence by P.W.1 and the contents of Ex.P.1-FIR clearly proved that negligence on the part of the 1st respondent car driver only caused the accident. The 2nd respondent has not let in any evidence to contradict the version of P.W.1. Hence, the Tribunal is justified in concluding that the negligence of the 1st respondent car driver alone caused the accident. The Petitioner states that she suffered fracture of proximal right humerus and multiple injuries all over the body and underwent treatment in Government Royapettah Hospital and to prove the same, produced Ex.P.2-Copy of Accident Register, Ex.P.3-OP Chit. It is clear from Ex.P.3 also that she suffered fracture of proximal right humerus and multiple injuries all over the body.

8. Having suffered fracture of proximal right humerus and multiple injuries all over the body, the Petitioner could not have carried on her work atleast for 2 months. Thus the loss of income during the period of treatment has to be fixed at Rs.5000/- x 2 = Rs.10,000/-.

9. The Petitioner examined P.W.3-doctor, who assessed disability and issued Ex.P.9 disability certificate, clearly stated that the petitioner is having difficulty in lifting heavy objects, suffering from pain and stiffness in the right shoulder. Further P.W.3 stated that the movement of the Petitioner's right shoulder is restricted and disability is assessed at 45%. It is clear that due to disability suffered by her, as a home maker, she would certainly have difficulty in doing some of the household work. Even though, the doctor assessed the disability at 45%, the Tribunal fixed the disability at 30% only.

10. Aggrieved over the same, it is pointed out by the learned counsel for the petitioner that in the absence of the any contra evidence, it is not proper for the Tribunal to reduce the disability fixed by the medical expert and the same is unsustainable. In support of the same, he relied upon the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] wherein, it is held as follows:-

"P.W.2 doctor determined the disability at 35%. However, the Tribunal without any contra evidence reduced the same to 30% and awarded a sum of Rs.90,000/- towards disability. The said reduction is unwarranted in the absence of any contra-evidence of Experts and hence, this

court redetermines the disability at 35% and awards a sum of Rs.1,05,000/- towards disability."

11. The learned counsel for the Petitioner also relied upon another decision reported in 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], wherein, it is held as follows:-

"14. Merely because the disability certificate has been issued after three years from the date of accident, it cannot be concluded that the assessment made by the doctor as excessive. Considering the nature of injuries, the surgeries underwent by the appellant, this court is of the view that the reason assigned for reducing the percentage of partial and permanent disablement, cannot be accepted and therefore, this court deems it fit to restore the extent of disablement assessed by P.W.3 doctor to 40% and following the decision in M.D. TNSTC Ltd., S.Kannappan, 2007 (2) TNMAC 1 ; and Prahalath Jasmathiya Vs. V.Sankaran, 2009 (5) MLJ 1549 (Mad-NOC) awarded a sum of Rs.80,000/- (Rs.2000/- per percentage of disability.)"

Following the above said Ruling, it is clear that there is no valid reason for the Tribunal to reduce the permanent disability fixed by the doctor at 45% to 30%. The Tribunal has not stated any reason for reducing the same. Hence, on the basis of P.W.2 evidence, disability suffered by the Petitioner is fixed at 45%. It will be appropriate to award Rs.2000/- per percentage of disability. Accordingly, for the permanent disability, this court is inclined to award the amount as calculated hereunder:-

45% x 2000 = Rs.90,000/-.
Thus, a sum of Rs.90,000/- is awarded under the head "permanent disability". Considering the nature of injury suffered by the petitioner and the treatment underwent by her, it is appropriate to grant Rs.10,000/- towards attendant charges and Rs.20,000/- towards loss of amenities.

12. In view of the foregoing discussion, the modified award amount is as follows:-

Head	Amount awarded by the Tribunal	Amount awarded by this court
1.Loss of earnings	Rs. 15,000/-	Rs. 10,000/-
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/-

Head	Amount awarded by the Tribunal	Amount awarded by this court
6.Loss of amenities	Rs. 15,000/-	Rs. 20,000/-
7.Pain and suffering	Rs. 30,000/-	Rs.30,000/-
8.Disability at Rs.2000/- per percentage	At 30% Rs. 60,000/-	At 45% Rs.90,000/-
9.Attender charges	----	Rs.10,000/-
Total	Rs. 1,35,500	Rs.1,75,500/-

In the result,

(i) This Civil Miscellaneous Appeal is partly allowed;

(ii)The Appellant/Claimant is entitled to a sum of Rs.1,75,500/- (Rupees One Lakh Seventy five thousand five hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate cost;

(iii)The second respondent -Insurance company is directed to deposit the award amount before the Tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal shall pass appropriate orders on application filed by the Appellant for disbursal of the award amount. No cost. As Per order passed in CMP.No.10201 of 2017 dated 08.02.2018 in CMASR.No.44886 of 2017, the appellant shall forego interest for the delay period.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.

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

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 19496.

C.M.A.No.326 of 2018

RK (CO)

SP(12/04/2018)