

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2072 of 2017

K.Chandra

... Appellant/Petitioner

vs

1.B.Sofiya

2.ICICI Lombard General Insurance Co.Ltd
No.140, Chottabai Centre
Nungambakkam High Road, Chennai-34 ...Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 24.09.2013 made in M.C.O.P.No.99 of 2010 on the file of Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Ponnammallee.

For appellant : : Mr.J.Mahalingam
For Respondents : :
for R1 : : Notice dispensed with.
for R2 : : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimant, challenging the judgment and decree dated 24.09.2013 made in M.C.O.P.No.99 of 2010 on the file of Motor Accident Claims Tribunal, II Additional District Court, Tiruvallur at Ponnammallee.

2. The parties are referred to hereunder as referred to in Tribunal. The case of the petitioner is that on 14.02.2008, at about 7.00 p.m., while the petitioner was travelling as pillion rider in a TVS scooty bearing Reg.No.TN-22-U-5644, at Sirukalathur Main road, Kundrathur, the vehicle was stopped at signal by the rider at the junction of EVR road, to take a right turn; at that time, a van bearing Reg.No.TN-09-AR-9533 owned by the 1st respondent and insured with the 2nd respondent, came at high speed, driven in a rash and negligent manner by its driver from behind and dashed against the motor cycle on which the petitioner was sitting and thereby caused grievous injuries to the petitioner. Thus the petitioner contends that the accident occurred only due to rash and negligent driving of the van

driver and the respondents are liable to pay compensation. The petitioner also states that she suffered fracture and also head injury and took treatment as inpatient in a private hospital from 12.04.2008 to 15.04.2008 and thereafter as outpatient for 6 months. The petitioner states that she has suffered permanent disability and is unable to attend to his work. The petitioner also states that she was aged 50 years at the time of accident and was earning Rs.300/- per day in her vegetable vending business. Hence, the petitioner sought for compensation of Rs.6,00,000/- from the respondents herein.

3. On the other hand, opposing the petition, the 2nd respondent/Insurance Company contends that it is not correct to say that the accident occurred only due to the mistake on the part of the 1st respondent vehicle driver. According to the 2nd respondent, the accident occurred due to contributory negligence on the part of the rider of the Petitioner's motor cycle and as such, the 2nd respondent alone is not liable to pay compensation. Hence, the respondent seeks dismissal of the petition.

4. Before the Tribunal, the petitioner examined herself as P.W.1 and medical expert as P.W.2 and produced documents Ex.P.1 to P.5 to substantiate her claim. On the other hand, the 2nd respondent/Insurance Company did not let in any oral or documentary evidence. On the basis of available materials, the Tribunal found that the driver of the 1st respondent drove the vehicle in a negligent manner, caused the accident and accordingly, awarded a sum of Rs.1,61,000/- as compensation to the petitioner. Not satisfied with the award amount, the petitioner/claimant has come forward with the present appeal.

5. The learned counsel for the appellant/petitioner contended that due to the injury suffered, the petitioner is unable to sit on the floor and as a vegetable vendor, she is not in a position to carry on her business. The petitioner has suffered 45% disability and due to that there is consequential loss of earning capacity and she is walking with difficulty. When the petitioner underwent treatment for a period of 6 months, there was total loss of earning and the Tribunal has not provided any compensation for the same. The learned counsel further contended that the Tribunal ought to have awarded higher compensation for future loss of earning power but failed to consider the same properly. The amount awarded under the head "Pain and Suffering" is very nominal and it has to be increased. It is also contended that the award under different heads is not appropriate and the same is to be enhanced. Hence, the learned counsel for the petitioner/claimant seeks to entertain the appeal and to award higher compensation, which will be just and proper.

6. On the other hand, opposing the claim of the petitioner, the 2nd respondent would contend that the Tribunal has properly appreciated the evidence available on record and arrived at the proper compensation and the amount awarded under various heads is correct and needs no interference and hence, the 2nd respondent sought for dismissal of the appeal.

7. The claim of the petitioner is that while the petitioner was travelling as pillion rider in a TVS scooter bearing Reg.No.TN-22-U-5644, the rider of the two wheeler proceeding from Sirukalathur Main Road took a right turn after applying the indicator and at that time, a van bearing Reg.No.TN 09 AR 9533 came from behind and dashed against the vehicle in which the petitioner, who was travelling as pillion rider suffered grievous injuries on her hip and head. It is seen from Ex.P.2 discharge summary that the petitioner underwent treatment after undergoing surgery. It is also clear from Ex.P.1 FIR that a case in this regard, has been registered in Crime No.230/2008 against 1st respondent / driver of the van. In the absence of any contrary evidence on the side of the respondents, it is clear that the driver of the 1st respondent alone is responsible for the accident. The petitioner states that she was aged 50 years and earning Rs.300/- per day by carrying on vegetable vending business. The age of the petitioner is not seriously disputed. As such, the age of the Petitioner fixed by the Tribunal as 50 is justified.

8. The petitioner examined herself to prove her income. She has stated that she earned Rs.300/- per day from the vegetable vending business. However, there is no proof or independent witness for the same. It is clear from the evidence of P.W.2 and Ex.P.4 disability certificate that the petitioner suffered 45% physical disablement. Hence, taking into consideration Ex.P.2-Discharge summary, Ex.P.5- X-ray and Ex.P.4-Disability Certificate, this court is of the view that fixing 40% disability for the injuries suffered by the petitioner will be appropriate. Further, the loss of income for the permanent disability at 40% is calculated as under:-

$\text{Rs.3000/-} \times 40\% \text{ disability} = \text{Rs.1,20,000/-}.$

Thus, a sum of Rs.1,20,000/- is awarded under the head "loss of income due to permanent disability".

9. The petitioner states that she was treated as inpatient from 12.04.2008 to 15.04.2008 and further stated that she underwent surgical treatment on 13.04.2008 and also took further treatment for a period of 6 months. In such circumstances, her normal day to day work would have been affected and she has stated in her evidence that she could not carry on her vegetable vending business at that point of time. The learned counsel for

the appellant/petitioner contended that during the said period of 6 months, loss of income was 100% and as such, the petitioner is entitled to get compensation towards loss of earning for the said period of 6 months, at the rate of Rs.300/- per day. Accordingly, while fixing the notional income of the petitioner at Rs.6500/- per month, for the period of 6 months treatment undergone by the petitioner, loss of income is calculated as under:-

Rs.6500/- x 6 months = Rs.39,000/-

Thus, a sum of Rs.39,000/- is awarded under the head "loss of income during the period of treatment".

10. The petitioner has suffered fracture and also experienced swelling and pain in the right leg and stiffness in muscles, hip and thigh region and therefore, it will be appropriate to award Rs.40,000/- towards "Pain and Suffering". Further, the petitioner states that she was taking treatment for nearly 6 months. Hence, under the head "transport expenses", a sum of Rs.10,000/- is awarded by this court. The petitioner is also stated to have sustained grievous injuries in the accident and hence, considering the nature of injuries, this court is of the view that she could have spent some amount towards extra nourishment for the recovery and therefore, a sum of Rs.15,000/- is awarded under the head "Extra Nourishment". Likewise, as the petitioner has been taking treatment continuously for 6 months, this court is inclined to award Rs.10,000/- towards "Attender Charges". The petitioner has produced bills towards medical expenses and thus a sum of Rs.45,000/- is awarded under the head "medical expenses".

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Compensation for disablement	Rs. 80,000/-	Rs. 1,20,000/-
2	Compensation for pain and suffering	Rs. 10,000/-	Rs. 40,000/-
3	Transport expenses	Rs. 3,000/-	Rs. 10,000/-
4	Extra nourishment	Rs. 5,000/-	Rs. 15,000/-
5	Medical expenses	Rs. 43,000/-	Rs. 45,000/-
6	Loss of income	Rs. 19,500/-	Rs. 39,000/-
7	Loss of amenities	---	Rs. 20,000/-
8	Damage to clothing	---	Rs. 1,000/-
9	Attender charges	---	Rs. 10,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
	Total	Rs.1,60,500/- rounded off to Rs. 1,61,000/-	Rs. 3,00,000/-

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is enhanced to Rs.3,00,000/- from Rs.1,61,000/-.
- (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. However, interest is waived off for the period of delay as per order of this court dated 22.06.2017.
- (iii) In view of the above modified award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order.
- (iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above with accrued interest, by filing proper application before the Tribunal, less the amount if any already withdrawn. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge, Poonamallee.

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.8342
+2cc to Mr.R.Sreevidhya, Advocate, S.R.No.18570

C.M.A.No.2072 of 2017

KJI (CO)
RRK (09/03/2018)