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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.9 of 2016

T.Lakshmi

..Appellant/Petitioner

-Vs-

1.Shivashankaran

2.ICICI Lombard General Insurance Company Ltd.,
First Floor, Arihant Plaza
No.84/85, Walltax Road,
Chennai-3

3.Mahendra World City Developers Ltd.
No.17/18, Pattulos Road
Anna Salai, Chennai

(R1 and R3 Remained exparte before the Tribunal)

4.National Insurance Co.Ltd.,
No.37, Pantheon Road
Near Hotel Ashoka
Egmore, Chennai-8.

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 06.08.2014 made in M.C.O.P.No.876 of 2010 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For appellant

: : M/s.M.Malar

For Respondents

: : Ms.R.Srividhya for R2

M/s.N.B.Surekha for R4

R1 and R3-Remained Exparte
before the Tribunal.



J U D G M E N T

The Appellant/Claimant has filed this appeal, challenging the award dated 06.08.2014 made in M.C.O.P.No.876 of 2010 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 11.12.2009 at about 9.45 hours, while the Petitioner was proceeding as a pillion rider in a Motor cycle bearing Reg.No.TN-21-AV-1560 in the GST Road, at Maramalai Nagar, the 1st respondent car bearing Reg.No.TN-01-AF-8274 driven at high speed, dashed against the Petitioner causing her multiple injuries all over her body. At the same time, an auto bearing Reg.No.TN-20-AA 3299 came at high speed, dashed behind the car, which also caused injuries to the Petitioner. The said auto belongs to the 1st respondent and insured with the 2nd respondent. The car belongs to the 3rd respondent and insured with the 4th respondent. The Petitioner was aged 32 years and she was employed in Ford Company in House Keeping Department, earning Rs.6000/- per month. Due to the injuries suffered, she is unable to attend to her family work. Thus, the Petitioner sought for a sum of Rs.18,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The auto bearing Reg.No.TN-20-AJ-3299 was not involved in the accident. The accident took place only due to rash and negligent driving by the rider of the motor cycle bearing Reg.No.TN-20-AV-1560, in which, the Petitioner travelled as pillion rider. The non-joinder of the rider's vehicle/motor cycle's owner and insurer is fatal to the Petitioner's claim. The claim of the Petitioner about her age, avocation and income is denied. The Petitioner's claim is excessive. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Likewise, opposing the claim of the Petitioner, by filing counter, the 4th respondent -Insurance company disputes and denies the Petitioner's claim and the manner in which the accident occurred. The car bearing Reg.No.TN-01-AF-8274 was not insured with them. The vehicle was not involved in the accident. The driver of the car did not possess valid driving licence. The claim of the Petitioner



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eyewitness and they deposed as P.W.1 and P.W.2. Based on the evidence of the both Petitioners who deposed as P.W.1 and P.W.2 as well as the contents of Ex.P.1 FIR, the Tribunal found that negligence of the drivers of the auto and car are responsible for the accident. The said conclusion arrived at by the Tribunal is based on proper appreciation of evidence on record and the same is confirmed.

11. The Petitioner/appellant who deposed as P.W.1 stated about the injuries suffered by her and produced Accident Register Copy issued by the SRM Hospital as Ex.P.2. It is clear from Ex.P.3-Discharge summary that the Petitioner underwent treatment as inpatient in Parvathy Hospital, Chrompet, from 11.12.2009 to 16.12.2009. Further as stated above, she suffered multiple fracture and undergone surgery to fix the fractured bones. Subsequently as evidenced by Ex.P.4, Discharge summary, it is clear that she took treatment from 18.01.2010 to 19.01.2010. The Petitioner stated that she was aged 32 years and by working in the House Keeping Department in Ford Company, Maraimalai Nagar, was earning Rs.6000/- per month. However, the Petitioner has not produced any proof in respect of her employment, income as well as her age. The Petitioner stated that she suffered multiple fracture and underwent surgery resulting in partial permanent disability to her. The doctor who deposed as P.W.3 stated that on personal examination and analysis of Ex.P.8-X ray taken by him, he assessed disability suffered by the Petitioner at 80%. According to P.W.3, the fractured bones are malunited and due to the same, the Petitioner is having pain and swelling in her back. Further the Petitioner suffered spinal fracture, right iliac bone fracture and iliac disruption. Further due to fracture of L1, L2, L3 and L4 Transverse process fracture and multiple rib fracture in 7th and 8th right side, the petitioner underwent surgery whereby Pelvic External fixator application is done. However, P.W.3 doctor has not given any calculation along with Ex.P.10-Disability Certificate issued by him. Admittedly, P.W.3 did not treat the Petitioner.

12. Pointing it out, the learned counsel for the respondents/Insurance company contends that the disability assessed by P.W.3/doctor is highly excessive and not appropriate. Further it is pointed out that there is no proof for the monthly earning of the Petitioner and assuming that she is involved in home keeping department in a Private Company, it is not stated whether she continued to work or terminated from the employment subsequently to the injury.



The amount awarded by the Tribunal under other heads is confirmed as this court finds no reason to enhance the compensation. The enhanced modified compensation to the claimant/injured appellant is as under:-

1.Loss of income for 6 months	= Rs.30,000/-
2.Transportation	=Rs.15,000/-
3.Extra nourishment	=Rs.15,000/-
4.Damage to clothes	=Rs.1,000/-
5.Medical expenses	=Rs.50,000/-
6.Attender charges	=Rs.15,000/-
7.Loss of amenities of life	=Rs.40,000/-
8.Pain and suffering	=Rs.50,000/-
9.Disability	=Rs.1,40,000/-
10.Loss of earning power.	=Rs.3,84,000/-.
Total	=Rs.7,40,000/-

(iv) The 2nd and 4th respondents are directed to pay the



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award amount as ordered above, along with accrued interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) The appellant/claimant is entitled to withdraw the award amount, along with accrued interest. The Tribunal shall pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs.

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents Claims Tribunal,
II ND Judge, Court of Small Causes, Chennai.

2. The section officer,
VR Section,
High court
Madras

+1cc to M/s.M.Malar , Advocate SR.No. 42218

+1cc to Ms.R.Srividhya , Advocate SR.No. 42832

+1cc to M/s.N.B.Surekha, Advocate SR.No. 41820

C.M.A.No.9 of 2016

ASK(06/12/2018)