

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.412 of 2018
and CMP.No.3675 of 2018

The Oriental Insurance Co.Ltd.,
No.115/216, Prakasam Salai
Chennai-600 108

..Appellant/
2nd respondent.

Vs.

1.Lalitha ..1st respondent/Petitioner

2.R.Subramani ..2nd Respondent/1st respondent.

Civil Miscellaneous Appeal filed u/s. 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2017 passed in M.C.O.P.No.7371 of 2015 on the file of Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For appellant : : Mr.D.Bhaskaran

for Respondents : : M/s.S.Ravikumar
Amar D.Pandiya for R1.

J U D G M E N T

By consent of learned counsel appearing for both sides, the Civil Miscellaneous Appeal is taken up for final disposal at the stage of admission itself.

This Civil Miscellaneous Appeal is filed by the appellant/injured Petitioner, challenging the judgment and decree dated 30.06.2017 passed in M.C.O.P.No.7371 of 2015 on the file of Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner-Lalitha is that on 13.08.2015 at about 17.30 hours, as the petitioner was travelling as pillion-rider in the two wheeler bearing Reg.No.TN-12-2364 near Indian Oil Petrol Bunk, Alappakkam Main Road, Maduravoyal, Chennai, a car bearing Reg.No.TN-04-H-8800

came in the same direction at high speed driven in a rash and negligent manner and dashed against the motor cycle in which the Petitioner was travelling as a pillion rider. As the result of which, the petitioner was thrown out and suffered fracture in the left leg ankle and grievous injuries all over the body. At the time of the accident, the petitioner was 48 years and by working as a Tailor on her own was earning Rs.700/- per day. Now due to the injury suffered, she is not able to carry on her Tailoring work. Thus, the Petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the genuineness of the accident has to be established by the Petitioner. Even though, it is alleged by the Petitioner that the accident occurred on 13.08.2015, the complaint with the Police was lodged only on 14.08.2015. The Petitioner has to establish the nature of injury suffered by her. The claim of the Petitioner is exorbitant. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined herself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.8 to prove her claim. While the 1st respondent remained exparte, on the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found the negligence of the 1st respondent vehicle driver alone caused the accident, passed award for a sum of Rs.4,75,500/- payable by the 2nd respondent. Aggrieved against the finding of the Tribunal, the appellant/2nd respondent/Insurance Company has come forward with the present appeal.

5. The learned counsel for the appellant/2nd respondent-Insurance company contends that the Tribunal erred in granting huge sum of Rs.4,75,500/- as compensation without proper adjudication. The Claims Tribunal failed to note that if the doctor who did not treat the injuries has issued disability certificate without proper medical assessment, the said evidence cannot be accepted. The Tribunal failed to note that multiplier method of calculation is not warranted in the case on hand. The learned counsel for the 2nd respondent-Insurance company thus sought to set aside the award passed by the Tribunal and to entertain the appeal.

6. Per contra, the learned counsel for the 1st respondent/injured petitioner contends that the quantum of the award passed by the tribunal is based on proper appreciation of materials available on record and no ground is made out to

entertain the appeal. Thus the Petitioner/1st respondent seeks dismissal of the appeal.

7. The Petitioner who deposed as P.W.1 stated that the accident occurred only due to the negligence of the driver of the 1st respondent vehicle. The Police registered the case as per Ex.P.1-FIR against the driver of the 1st respondent vehicle only. The contents of Ex.P.1- FIR corroborates the oral evidence of P.W.1. On the other hand, there is no contra evidence on the side of the 2nd respondent. Therefore, it is clear from the evidence of P.W.1 and contents of Ex.P.1-FIR that the accident occurred due to negligence of the 1st respondent vehicle driver only. Therefore, the finding of the Tribunal in respect of negligence aspect is confirmed.

8. The Petitioner-Lalitha states that she suffered fracture in her left leg ankle; multiple grievous injuries all over her body. P.W.2 doctor examined the petitioner, assessed disability as 30% Partial Permanent disability and issued disability certificate as Ex.P.8. Ex.P.7-X ray is also marked. P.W.2 doctor opined that lower leg region near ankle movements are restricted by 30 degrees; grade III of flexors and extensors of leg gastrocnemius and tibials anterior group of muscles leading to muscle weakness. She finds it difficult to climb staircase, walk for long time, to sit cross legged, to squat, to lift weight more than ½ kg and painful in her functional disability as a tailor.

9. Considering all the above stated circumstances, the Tribunal has correctly fixed 30% disability and compensation is given at the rate of Rs.3000/- per percentage of disability and the same is just and proper. Therefore, the sum of Rs.90,000/- awarded under the head "disability" requires no interference and the same is confirmed.

10. Even though the petitioner states that she was earning Rs.700/- per day by working as Tailor, there is no proof for the same. Therefore, the notional monthly income is fixed at Rs.7,500/-. Considering the injury suffered by the Petitioner and the treatment period, the loss of income for the period of 4 months is calculated as under:-
Rs.7,500/- x 4 months = Rs.30,000/-.
Thus, a sum of Rs.30,000/- is awarded under the head "Loss of income during the period of treatment".

11. The Tribunal, apart from providing compensation towards Permanent disability also awarded compensation of Rs.1,98,000/- under the head "loss of earning in future". As there is no evidence that the petitioner could not do her tailoring work in future and earn income because of the injury suffered by her,

the sum of Rs.1,98,000/- awarded by fixing 20% disability and applying the multiplier of 11 is unsustainable and the same is set aside.

12. Similarly, the sum of Rs.20,000/- awarded under the head "Damages for mental and physical shock" is unsustainable and the same is set aside. However, taking into consideration the nature of injury and the treatment underwent by the Petitioner, this court is inclined to enhance the compensation granted under the head "Attender charges" as Rs.15,000/- instead of Rs.1,750/- and under the head "Loss of amenities" Rs.50,000/- instead of Rs.25,000/-. This court is also inclined to reduce the compensation awarded under the head "Extra Nourishment" as Rs.15,000/- instead of Rs.30,000/- and under the head "Pain and suffering" instead of Rs.50,000/-, Rs.40,000/- is awarded. Accordingly, the modified compensation payable to the Injured Petitioner-Lalitha is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of Income	Rs. 1,750/-	Rs. 30,000/-
2.	Attender charges	Rs. 1,750/-	Rs. 15,000/-
3.	Transport	Rs. 10,000/-	Rs. 10,000/-
4.	Extra nourishment	Rs. 30,000/-	Rs. 15,000/-
5.	Damage to clothing and articles	Rs. 1,000/-	Rs. 1,000/-
6.	Medical bills	Rs. 47,867/-	Rs. 47,867/-
7.	Pain and suffering	Rs. 50,000/-	Rs. 40,000/---
8.	Damages for mental and physical shock	Rs. 20,000/-	---
9.	Disability 30% Rs.3,000/-	@ Rs. 90,000/-	Rs. 90,000/-
10.	Loss of Amenities	Rs. 25,000/-	Rs. 50,000/---
11.	Pecuniary loss	Rs.1,98,000/-	---
12.	Future medical expenses	---	Rs. 20,000/-
	Total	Rs.4,75,367/- rounded off to Rs.4,75,500/-	Rs.3,18,867/- rounded off to Rs.3,19,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The Petitioner-Lalitha/1st respondent is entitled to award amount of Rs.3,19,000/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iii) The appellant/Insurance company is directed to deposit the award amount of Rs.3,19,000/- (Rupees Three Lakhs nineteen thousand only) within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the Petitioner/1st respondent is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

nvsri

To

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

+1cc to Mr.S.Ravikumar, Advocate SR.No.15849

+1cc to Mr.D.Bhaskaran, Advocate SR.No.16048

C.M.A.No.412 of 2018

SS (CO)
GN (04/07/2018)

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