

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.429 of 2018

Sarpunisha Begam

..Appellant/Petitioner

Versus

1.D.Palani

2.The Oriental Insurance Co.Ltd,
No.115, Prakasam Salai,
Broadway, Chennai -108.

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 28.01.2016 made in M.C.O.P.No.2341 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : K.Varadha Kamaraj
For Respondents : M.Krishanamoorthy [for R2]

J U D G M E N T

The Appellant/petitioner has filed this appeal against the judgment and decree dated 28.01.2016 made in M.C.O.P.No.2341 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner/appellant is that on 11.01.2013 at about 4.00 p.m when the appellant was walking in the Pattinapakkam Leath Castle Road from East-West, motorcycle bearing Registration No.TN-10-J-3555 came in the opposite direction in a high speed without following the traffic rules, dashed against the appellant, who was walking on the left side of the road, resulting in fracture of femur, head injury, fracture of left shoulder and knee injury on left to the appellant/claimant. As the consequence of the injury suffered by the appellant, she was not able to attend to her regular work and she has suffered physical disability. Hence, the appellant/claimant claimed a sum of Rs.6,00,000/- as

compensation from the respondents who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim petition, by filing a counter, the 2nd respondent/Insurance Company contends that the accident occurred not in the manner alleged by the petitioner/appellant, but only due to negligence of the petitioner/appellant herself. The claim about the age, avocation and income of the petitioner/appellant is disputed. The 1st respondent rider was not responsible for the accident. The rider of the two wheeler did not possess a valid driving license. Therefore, the same amounts to violation of policy conditions and hence the 2nd respondent/Insurance Company is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner/appellant examined herself as P.W.1 and the medical expert as P.W.2 and produced documents Exs.P.1 to P.11 to prove her claim. On the side of the respondent, neither oral nor documentary evidence were let in. The Tribunal, on the basis of available materials on record found the driver of the 1st respondent was negligent and awarded a sum of Rs.2,07,851/- as compensation to the petitioner/appellant payable by the 2nd respondent. Being not satisfied with the quantum awarded by the Tribunal, the appellant/claimant has come forward with the present appeal.

6. The learned counsel for the appellant contends that the Tribunal without any valid reason reduced the disability fixed by the medical expert from 50% to 40% and the same is not proper; the Tribunal failed to award any amount towards the future medical expenses and the amount awarded by the Tribunal under different heads is on lower side; thus, the appellant/claimant seeks enhancement of the award amount by allowing the present appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the negligence of the appellant alone resulted in the accident and as such she is not entitled to claim any compensation from the respondents; the Tribunal itself has passed an award on higher side without any basis and as such no ground is made out by the petitioner/appellant to enhance the award amount; Thus, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The petitioner/appellant who is the injured while deposing as P.W.1 has stated that when she was walking on the Leath Castle Road, Pattinapakkam, the driver of the 1st

respondent vehicle came at high speed and dashed against her, which resulted in her suffering grievous injuries. The said claim of the petitioner/appellant was disputed by the 2nd respondent/Insurance Company. However, the rider of the 1st respondent motor cycle has not been examined. Further, the police registered Ex.P.1 - F.I.R against the rider of the two wheeler only. In such circumstances, as the evidence of P.W.1 and contents of Ex.P.1 - F.I.R is not contradicted with any oral or documentary evidence by the respondents, it is clear and apparent that the accident had occurred only as alleged by the petitioner/appellant. Thus the finding of the Tribunal that the accident was caused only on account of the negligence on the part of the driver of the 1st respondent vehicle is just and proper.

10. Even though the 2nd respondent/Insurance Company contended before the Tribunal that the driver of the two wheeler was not having valid driving license resulting in violation of policy condition, the same is not stressed before this Court. Further as rightly pointed out by the Tribunal there is nothing on record to substantiate the said claim of the 2nd respondent/Insurance Company. Admittedly the 1st respondent's vehicle was insured with the 2nd respondent/Insurance Company and the policy was in force on the date of occurrence. As such, the respondents, who are the owner and insurer of the vehicle, are liable to pay compensation.

11. The appellant stated that after the occurrence she was admitted in G.H. Royapettah, on 11.01.2013 and was discharged on 14.01.2013 as evidenced by Ex.P.3 - Discharge Summary. The appellant states that she underwent treatment in a private hospital from 15.01.2013 to 20.01.2013 for fracture of femur, head injury, fracture of left shoulder and injury on left knee and the same is clear from Ex.P.4 - Discharge summary. The appellant produced X-Rays taken in the hospital as Exs.P.7 and P.8. Thus, from the materials available on record it is clear that the appellant has suffered fracture as well as grievous injuries. The Doctor who examined her and who issued Ex.P.11 - Disability certificate stated that the total disability suffered by the petitioner is 50%. The Tribunal, considering the evidence on record, fixed the disability at 40% instead of 50% as assessed by the P.W.2 - Doctor. Considering the nature of injury suffered and the evidence of P.W.2 - Doctor, as rightly contended by the learned counsel for the petitioner/appellant, the disability ought to have been fixed at higher level. Hence, the disability suffered by the petitioner/appellant is fixed at 45% instead of 40% as fixed by the Tribunal. For the same, as rightly held by the Tribunal the appellant is entitled to get Rs.3,000/- per percentage of disability. Accordingly, the disability compensation is assessed as follows:-

$$\text{Rs.3000} \times 45 = \text{Rs.1,35,000/-}$$

12. Considering the nature of injuries and the fact that the appellant being a house wife will not be able to carry on her routine works regularly it is appropriate to provide for loss of amenities, which the Tribunal has failed to award. Hence, towards the loss of amenities a sum of Rs.25,000/- is awarded. Considering the nature of injury suffered by the petitioner and the other attributing circumstances, this court is of the view that the amount provided under different heads by the Tribunal is just and proper and the same needs no interference.

13. 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	Loss of Income	Rs. 11,690.00	Rs. 11,690.00
2	Attender Charges	Rs. 2,000.00	Rs. 2,000.00
3	Transport Charges	Rs. 3,000.00	Rs. 3,000.00
4	Extra nourishment	Rs. 10,000.00	Rs. 10,000.00
5	Damages of Clothes	Rs. 1,000.00	Rs. 1,000.00
6	Medical Expenses	Rs. 20,161.00	Rs. 20,161.00
7	Pain and Suffering	Rs. 30,000.00	Rs. 30,000.00
8	Physical shock	Rs. 10,000.00	Rs. 10,000.00
9	Disability	Tribunal 40% * 3000 Rs. 1,20,000.00	45% * 3000 Rs. 1,35,000.00
10	Loss of Amenities	-	Rs. 20,000.00
11	Total	Rs. 2,07,851.00	Rs. 2,42,851.00

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

- (i) The award of the Tribunal is enhanced to Rs.2,42,851/- from Rs.2,07,851/-.
- (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 2nd 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 six weeks from the date of receipt of a copy of this judgment.

- (iv) On such deposit, the claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.
- No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

bri

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 K.Varadha Kamaraj Advocate,SR.17229

+ 1 cc to M.Krishnamoorthy Advocate,SR.17268

C.M.A.No.429 of 2018

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