

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.454 of 2018

F.Sophiya ...Appellant/Petitioner

..vs..

1.D.Ebenezer Bakkiyam

2.ICICI Lambard General Insurance
Company Ltd.,
Chotah Bhai Centre, 2nd Floor,
No.140, Nungambakkam High Road,
Chennai-34.

...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 20.01.2005 made in MCOP.No.1524 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge. Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondents : Mr.H.Kester for R-1
Mrs.R.Srividhya for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 20.01.2005 made in MCOP.No.1524 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 01.12.2012 at about 5.45 hours, as the petitioner was crossing the CTH Road,

Pattabiram Babu Nagar, Anna Street, a Car bearing Registration No.TN-20-BK-7065 came at high speed dashed against the petitioner causing her multiple grievous injuries all over the body. At the time of the accident the petitioner was doing final year degree course in Stella Marry College, Chennai and she was aged about 20 years. Due to the injuries suffered in the accident, her entire future prospects including the matrimonial prospects is affected. Thus, the petitioner seeks a sum of Rs.30,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent/Insurance company filed counter contending that the manner of accident as claimed by the petitioner is not true. The accident occurred only due to the negligent act of the petitioner who tried to cross the busy road without noticing the on coming vehicle. As the petitioner himself being tort-feaser, she is not entitled to ask for compensation. The claim of the petitioner about the age, injuries suffered, treatment undergone is denied. The claim of the petitioner is exorbitant. Hence, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined herself as P.W.1, medical expert was examined as P.W.2, and produced documents Ex.P1 to Ex.P18 to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the driver of the first respondent car alone caused the accident and awarded a sum of Rs.15,46,000/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioner/appellant contends that the disability assessed by the Doctor at 65% was reduced by the Tribunal to 55% without any reason. The Tribunal ought to have awarded higher amount under the different heads. Hence, the petitioner seeks to enhance the quantum of award by allowing this appeal.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the petitioner being a student and the accident occurred only due to her negligence, there is no need to enhance the award. The claim made by her

itself is very exorbitant. The award passed by the Tribunal under the different heads is on the higher side and no ground is made out to enhance the same further. Thus, the second respondent-Insurance Company seeks dismissal of this appeal.

10. The petitioner has come forward with this appeal on the issue of quantum of award. The negligence aspect of claim is not seriously disputed in the appeal. The petitioner, who deposed as P.W.1 clearly stated that as she was crossing road noticing the on coming vehicle, the first respondent car came at high speed and dashed against her resulting in grievous injuries to her. Further, on the basis of complaint lodged, the police registered Ex.P2 First Information Report against the first respondent driver only. It is therefore clear from the oral evidence of P.W.1 as well as the contents of Ex.P1 that the driver of the respondent car alone caused the accident due to his negligence. Thus, the finding of the Tribunal on the negligence aspect is just and proper.

11. The petitioner, who deposed as P.W.1 stated that she was aged 20 years at the time of the accident and was doing her final year B.Sc. Physics Course. She has produced her College Identity Card as Ex.P10, wherein her date of birth is given as 10.12.1992. Thus, her age is fixed at 20 years. The petitioner states that she suffered head injury, Diffuse axonal injury, Right Pneumothorax, SAH Verticals Right Hand and Right leg is not functioning due to head injury and other multiple injuries all over the body. She took treatment at private Hospital in Porur from 04.12.2012 to 13.12.2012. Thereafter, she took treatment at Government General Hospital, Chennai from 13.12.2012 to 02.01.2013, as evidenced by Ex.P4. The petitioner was also taking treatment as out patient as evidenced by Ex.P14 out patient chit. Initially, the petitioner was treated as inpatient in ESSVEE Hospital, Ambattur, Chennai for three days as evidenced by Ex.P1 Discharge Summary. Thus, the petitioner has suffered multiple grievous injuries as stated above and underwent continuous treatment in different hospitals over a period of time.

12. The petitioner stated that she suffered permanent disability particularly contusion in her head. The Doctor, who examined the petitioner, assessed the disability suffered by the petitioner, deposed before the Court as P.W.2 and produced the disability certificate issued by him as Ex.P16. The Xray taken to assess the disability of the petitioner is also produced as Ex.P17 and Ex.P18. The photos with CD showing the injury suffered by the petitioner is marked as Ex.P13.

13. It is clear from the evidence of P.W.2 Doctor who issued the Ex.P16 disability certificate, that the petitioner

has suffered 65% permanent disability. According to P.W.2, due to the injuries suffered in the accident, the petitioner feels difficulty in concentrating and as such she is unable to continue her study. Further, she is also suffering suffocation, headache and various other physical disabilities. The lungs is also affected. Due to the same, she is suffering difficulty in breathing and suffocation. It is clear from the evidence of P.W.2 Doctor and the documents produced by the petitioner that she has suffered permanent disability and her brain power is also affected. In such circumstances, taking into account the evidence available on record, and considering the nature of injuries suffered by the petitioner, it will be appropriate to fix the permanent disability suffered by the petitioner at 60%, instead of 50% fixed by the Tribunal.

14. The petitioner was aged 20 years and was a student at the time of the accident. It is apparent due to the injuries suffered by her, she is unable to continue her study. Therefore, her entire life future prospects including the matrimonial prospects have been affected. In such circumstances, it will be appropriate to apply the multiplier method to compensate the loss caused to the petitioner. For the permanent disability suffered by her, the petitioner being student, the Tribunal on the basis of available materials including Ex.P11 copy of B.Sc. Mark Sheet of the petitioner and the oral evidence of P.W.1 finding her to be brilliant and very active student, fixed the notional income at Rs.10,000/-. At the time of the accident, the age of the petitioner being 20 years, the multiplier to be applied is 18. As such the loss of earning suffered by the petitioner is calculated as follows:-

$$\text{Rs.10,000/-} \times 12 = 1,20,000/- \times 18 = \text{Rs.21,60,000/-} \times 60/100 = \text{Rs.12,96,000/-}.$$

15. The Tribunal has awarded a sum of Rs.1,00,000/- for loss of education and a sum of Rs.40,000/- towards mental agony without any basis. Hence, the same is set aside. At the same time, considering the nature of injuries suffered by the petitioner, the Tribunal has awarded a sum of Rs.50,000/- towards loss of amenities of life but the same is on the lower side. Hence, the same is hereby enhanced to Rs.1,50,000/-.

16. Taking in to consideration, the petitioner has suffered 60% partial permanent disability and also contusion due to Head injury, due to which, she would have some pain and sufferings. For the same, it will be appropriate to award Rs.25,000/- only. Hence, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Transportation	15,000.00	15,000.00
2.	Extra nourishment	20,000.00	20,000.00
3.	Damage to Cloths	1,000.00	1,000.00
4.	Medical Expenses	1,75,000.00	1,75,000.00
5.	Attender Charges	15,000.00	5,000.00
6.	Loss of Amenities	50,000.00	1,50,000.00
7.	Permanent disability	10,80,000.00	12,96,000.00
8.	Pain and sufferings	50,000.00	25,000.00
9.	Loss of Education	1,00,000.00	-
10.	Mental Agony	40,000.00	-
	Total	15,46,000.00	16,87,000.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.16,87,000/-.

17. In the result, this appeal is partly allowed. No costs. The sum of Rs.15,46,000/- awarded by the Tribunal dated 20.01.2005 made in MCOP.No.1524 of 2013 on the file of the Motor Accident Claims Tribunal/II Judge. Small Causes Court, Chennai, is hereby enhanced to Rs.16,87,000/-. The second respondent-Insurance Company is directed to deposit the entire modified award amount of Rs.16,87,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. The petitioner/claimant is directed to pay deficit court fee within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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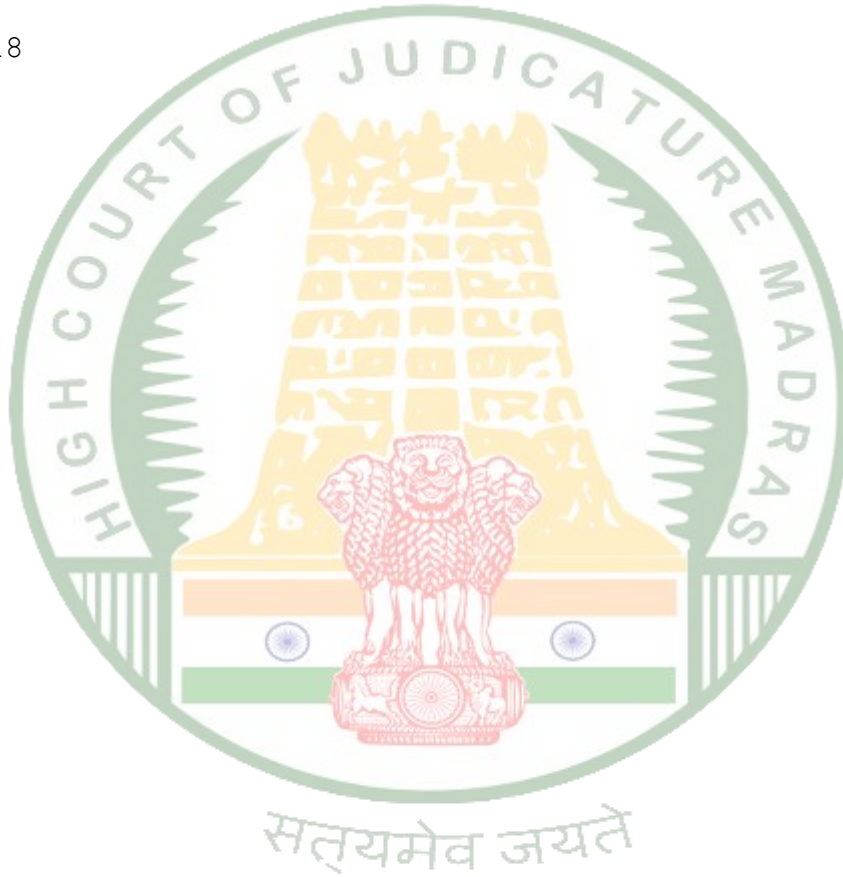
To

The II Judge, Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.

+lcc to Mr.A.N.Viswanatha Rao, Advocate Sr.No.19797

C.M.A.No.454 of 2018

GJII (CO)
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