

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2532 of 2014

Vijayalakshmi

... Appellant

..vs..

1. M/s.Rambal Ltd,
No.20, Corporation Road, Seevaram.

2. The National Insurance Co. Ltd.,
S-7, Mamanaji Centre,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai- 600 032.

.... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 09.08.2011 made in MCOP.No.646 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.IV, Chennai.

For Appellants : Mr.Ramya V.Rao

For Respondents : Mr.S.Arunkumar for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 09.08.2011 made in MCOP.No.646 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.IV, 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 22.08.2005 at about 10.45 a.m., when the petitioner was going as a pillion rider, along with her husband in his motor cycle bearing Registration No.AP-20-H-6279 from Kalpakkam to Guindy, as they

approached Egattur, a Car bearing Registration No.TN-07-AA-5301 came at high speed, driven in rash and negligent manner, dashed against the motor cycle, in which the petitioner was travelling causing her fracture of Distal Third right and in right wrist, fracture coccyx, un displaced fracture radial styloid. The petitioner who was aged about 43 years and employed as a teacher in Kinder Garden School, earning a sum of Rs.3,500/- per month. Due to the injuries suffered by her, she is not able to attend to her work as she used to. Hence, the petitioner seeks a sum of Rs.2,00,000/- 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 driver of the first respondent car did not possess any valid driving licence and as such the second respondent is not liable to pay any compensation to the petitioner. The claim of the petitioner about the manner in which the accident occurred is denied. The petition averments about the age, avocation and income of the petitioner is disputed. The claim of the petitioner is exorbitant. Thus, the second respondent seeks 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.P6 to substantiate her claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings as well as, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.70,000/- as compensation. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed 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/claimant contended that the petitioner who was employed as teacher in a private school lost her carrier prospects due to the injury suffered by her and the same was not properly appreciated by the Tribunal. The Tribunal failed to consider the 40% permanent disability suffered by the petitioner properly and failed to award due compensation for the same. The reasoning stated by the

Tribunal for awarding lesser amount under different heads is also not correct. Hence, the petitioner seeks enhancement of quantum of award by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance Company contended that the accident occurred only due to the negligence of the first respondent car driver and the claim of the petitioner is totally false. The Tribunal, on the available material, has awarded just and fair compensation and the same needs no interference. Hence, the second respondent seeks dismissal of this appeal.

10. The petitioner who deposed as P.W.1 stated that on 28.02.2005 while he was travelling as pillion rider in the two wheeler driving by her husband from Kalpakkam to Guindy, as they approached Egattur around 10.45 a.m., a car bearing Registration No.TN-07-AA-5301 came at high speed and dashed against the two wheeler, in which she was travelling resulting in the accident. The petitioner produced Ex.P1 copy of the first information report registered against the first respondent car driver. Thus, it is clear from the evidence of P.W.1 and the contents of Ex.P1 First Information Report that the accident occurred due to the negligence on the part of the first respondent car driver alone. The second respondent has not chosen to let in any contra evidence to disprove the claim of the petitioner. As such on the basis of P.W.1 evidence as well as Ex.P1 First Information Report it is clearly established that the negligence of the first respondent car driver alone caused the accident.

11. The fact that the petitioner was working as School Teacher and she was aged about 43 years is not seriously disputed. The petitioner states that she was treated as inpatient in Kanchi Kamakodi Sankara Hospital from 22.08.2005 to 23.08.2005 and she was diagnosed with a fracture in Distal third wrist right SI joint strain right wrist and L.S. Spine movement was restricted and painful. She produced discharge summary as Ex.P3. The petitioner also examined the Doctor who assessed the disability suffered by her deposed as P.W.2. According to him, there is malunion of fracture right wrist and due to that the gripping power is reduced and the petitioner cannot lift heavy articles. P.W.2 also stated that the petitioner will have restricted movement in her spine. The Doctor also produced Ex.P6 X-ray showing the malunion of the right wrist bones. It is therefore clear that the petitioner being a teacher cannot use her right hand properly to write or to do any work as a teacher. Hence, it is just and correct to fix the functional disability of the petitioner at 35% and for the same, the compensation is awarded at Rs.2,000/- per percentage. Thus, 35% x Rs.2000/- = Rs.70,000/- is given as compensation under the head of permanent disability.

12. The petitioner suffered grievous injuries and took treatment as inpatient and also subsequently outpatient. In such circumstances, for the pain and suffering undergone by her, she is entitled to get Rs.30,000/- as lumpsum compensation. Accordingly, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	-	70,000.00
2.	Transport and others	10,000.00	-
3.	Loss of income during treatment	-	10,500.00
4.	Extra Nourishment		10,000.00
5.	Injuries	30,000.00	-
6.	Pain and sufferings	30,000.00	30,000.00
7.	Loss of amenities	-	15,000.00
	Total	70,000.00	1,35,500.00

13. In the result, this appeal is partly allowed. No costs. The sum of Rs.70,000/- awarded by the Tribunal by order dated 09.08.2011 made in MCOP.No.646 of 2009 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Fast Track Court No.IV, Chennai is hereby enhanced to Rs.1,35,500/-. The second respondent Insurance Company is directed to deposit the entire modified award amount of Rs.1,35,500/- with interest at the rate of 7.5% p.a. 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 award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rrg

To

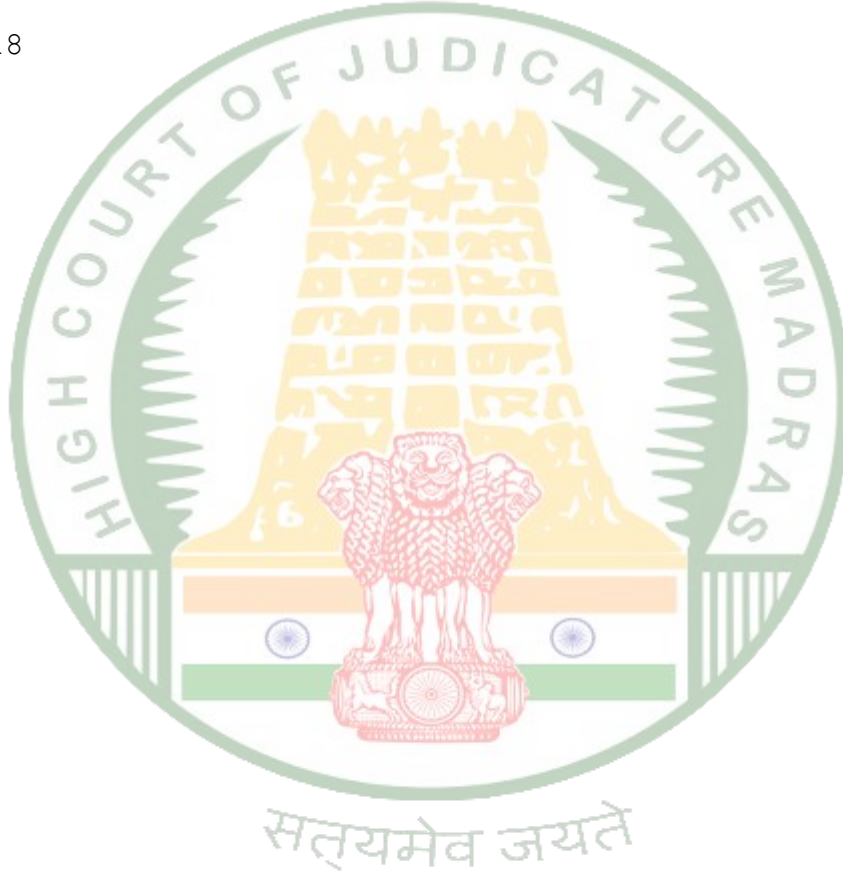
The Additional District Judge,
Fast Track Court No.IV,
The Motor Accident Claims Tribunal
Chennai.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13318

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.13399

C.M.A.No.2532 of 2014

RR(CO)
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