

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.274 of 2017 and 1668 of 2016
and C.M.P.No.17592 of 2017
in C.M.A.No.274 of 2017

ICICI Lombard General
Insurance Company Limited,
Chotabhai Towers, No.140,
Nungambakkam High Road,
Chennai-600 006.

..Appellant/Respondent
in C.M.A.No.274/2017

P.Prema

..Appellant/Petitioner
in C.M.A.No.1668/2016

Versus

1.P.Prema

..1st Respondent in 274/17
Petitioner in 1668/2016

2.A.S.Ramakrishnan

..1st Respondent in 1668/16
2nd Respondent in 274/17

1. A.S.Ramakrishnan

2.ICICI Lombard General
Insurance Company Limited,
Chotabhai Towers, No.140,
Nungambakkam High Road,
Chennai-600 006.

.. Respondents/Respondent
in C.M.A.No.1668/2016

Civil Miscellaneous Appeal filed against the judgment and
decree dated 29.02.2016 made in M.C.O.P.No.5863 of 2013 on the
file of the Motor Accident Claims Tribunal, II Court of Small
Causes, Chennai.

For Appellant : Mr.D.Venkatachalam
for P.H.Manoj Pandian

For Respondents : Mr.S.S.Swamikkannu for R1

C O M M O N J U D G M E N T

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 29.02.2016 made in M.C.O.P.No.5863 of 2013 on the file of Motor Accidents 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 the case of injury. On 22.03.2013 at about 6.45 hours, when the petitioner/claimant was proceeding in Motor cycle bearing Registration No.TN-09-BB-4538 driven by her husband/1st respondent insured with the 2nd respondent/Insurance Company, at Mount Poonamallee Road from East to West, a motor cycle coming from Kundrathur side at high speed dashed against the motor cycle in which the petitioner and 1st respondent were going resulting in the petitioner/pillion rider sustaining grievous injuries. According, to the petitioner at the Porur Main junction, in spite of the right signal was on, the rider of the motor cycle who is the husband of the petitioner and 1st respondent herein proceeded further and met with the accident.

3. The petitioner claims that the negligence on the part of the 1st respondent/husband is the cause for the accident. At the time of the accident, the petitioner was aged 33 years and she was working as staff Nurse in Ramachandra Hospital, Porur, Chennai, earning monthly salary for a sum of Rs.23,000/-. Due to the injury suffered by her, she is unable to do her work properly and suffered 30% permanent disability. As such, the petitioner prays for compensation of Rs.16,00,000/- from the respondents who are the owner and insurer of the vehicle. Hence, the petition.

4. On the other hand, opposing the petition, the 2nd respondent/Insurance Company filed counter contending that the petitioner is not a third party and as such she is not entitled for any compensation. Further, 2nd respondent/Insurance Company contends that in respect of the accident, complaint was lodged by the husband of the petitioner the 1st respondent herein against unknown vehicle driver and a case was registered only against the driver of another vehicle as the cause for the accident. In such circumstances, the claim of the petitioner in this case that the 1st respondent/husband alone is responsible for the accident is unsustainable and the same is made with malafide intention to get compensation from the 2nd respondent. Thus, the 2nd respondent seeks dismissal of the petition.

5. Before the tribunal, the petitioner examined herself as P.W.1 and medical expert as P.W.2 and produced document Exs.P1

to P6 to prove her contention. On the side of the 2nd respondent R.W1 was examined and Ex.R1 document was marked. The tribunal on the basis of available material on record found the 1st respondent responsible for the accident and awarded a sum of Rs.2,52,000/- as compensation to the petitioner.

6. Being aggrieved by the same, the Insurance Company has come forward with the appeal in C.M.A.No.274 of 2017, whereas, not being satisfied with the quantum award, the petitioner/claimant has come forward with the appeal in C.M.A.No.1668 of 2016.

7. The learned counsel for the petitioner/claimant contends that the Tribunal failed to consider the nature of injury suffered in the accident. The Tribunal ought to have awarded for loss of income for a period of 4 months instead of 1 month. The Tribunal has erred in giving small amounts under various heads. Considering the nature of disability suffered by the petitioner, the petitioner/claimant seeks for enhancement of the award amount by entertaining the appeal in C.M.A.No.1668/2016.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company submitted that as the unknown driver of the vehicle and its Insurance Company which caused the accident are not arrayed as party and the same is fatal to the case of the petitioner. The 2nd respondent/Insurance Company further contended that on the basis of complaint given by the 1st respondent herein who is none else but the husband of the petitioner, against the unknown motor cycle driver for causing the accident F.I.R has been registered against the said unknown motor cycle driver only. Hence, the claim of the petitioner, in the present case, that the accident occurred due to negligence driving of the 1st respondent is unsustainable and the finding of the Tribunal that the 1st respondent is responsible for the accident is not proper and the same is liable to be set aside. Further, the accident occurred due to negligence of unknown motor cycle driver, the 2nd respondent/Insurance Company is not liable to pay any compensation. The learned counsel for the 2nd respondent contended that the petitioner being the wife of the 1st respondent is not a third party and she cannot claim compensation from the 2nd respondent/Insurance Company. Thus, the 2nd respondent/Insurance Company seeks to entertain the C.M.A.No.274/2017 and to set aside the award passed by the Tribunal.

10. Heard both side and perused the materials available on records.

11. The petitioner/wife contends that on the fateful day of 22.03.2013, while she was travelling as pillion rider in motor cycle bearing Registration No.TN-09-BB-4538 owned and driven by her husband/ 1st respondent herein, they met with an accident resulting in her suffering grievous injuries. The petitioner, who deposed as P.W.1, stated that her husband alone is responsible for the accident. On the other hand, disputing the claim of the petitioner it is submitted by the 2nd respondent/Insurance Company that subsequent to the accident, on the basis of the complaint given by the 1st respondent herein who is the husband of the petitioner, a case was registered against the driver of the unknown motor cycle and the same is evidenced by Ex.P1, FIR, which is laid against some other driver. Thus, it is contended that the claim of the petitioner, in this case is that the negligence of the 1st respondent alone caused the accident cannot be true and the said claim cannot be accepted. However, as rightly pointed out by the petitioner there is no evidence on record to show that on the basis of Ex.P.1, FIR, police investigated the matter and filed any charge sheet against driver of unknown vehicle. In such circumstances, the absence of any contradictory evidence on the side of the respondent to the oral evidence of P.W.1, mere filing of the F.I.R alone cannot be sufficient to conclude that the accident occurred due to the negligence of unknown third party rider of the motor cycle. In the case on hand, P.W.1, has categorically spoken about jumping of signal by the 1st respondent which resulted in the accident.

12. The learned counsel for the 2nd respondent/Insurance Company further contended that the averments in the Ex.P.1-F.I.R, is contrary to oral evidence of P.W.1 and as such the claim of the petitioner is not correct and fair. According to Ex.P1, FIR, the driver of unknown vehicle alone caused the accident. However, before the Tribunal, P.W.1, stated that the 1st respondent negligence alone was the cause of the accident which is in contrary to the averments in Ex.P1, F.I.R, registered on the basis of complaint given by the 1st respondent herein. Further, the 2nd respondent/Insurance Company has not chosen to let in any evidence to rebut the oral version of the P.W.1 before the Tribunal. Admittedly, there is nothing on record to show as to whether any charge sheet was filed against the unknown driver. On the basis of Ex.P.1, F.I.R, the Insurance Company has also produced report of Revenue Inspector about nature of damage caused to the vehicle. Further, the Insurance Company has not produced any Investigation Report of its surveyor. Admittedly, the occurrence took place in a busy road near Porur Junction.

13. The respondents had not produced any Investigation report by its surveyor or any other document or oral evidence to disprove the said evidence of P.W.1, before the Tribunal. In such circumstances based on the oral evidence P.W.1, who is the injured, Tribunal has concluded that the driver of the motor cycle in which the petitioner was travelling as pillion rider is solely responsible for the accident. In the light of above said discussion, the finding of the Tribunal to that effect is just and proper.

14. It is claimed by the petitioner that the 1st respondent vehicle was insured with the 2nd respondent/Insurance Company and the same is admitted by R.W.1, the copy of the Insurance Policy is produced as Ex.R.1. It is clear from Ex.R.1 that the 1st respondent vehicle was having valid Insurance Policy on the date of the accident and the pillion rider also covered under the policy. In such circumstances, the 2nd respondent as the insurer is also liable to pay compensation apart from the owner of the vehicle the 1st respondent herein.

15. The petitioner, deposing as P.W.1, stated that on date of accident she was working as a senior staff nurse in Ramachandra Hospital, Porur, Chennai, earning a monthly salary of Rs.20,000/- as evidenced by Ex.P3, Salary slip. P.W.1, further stated that she suffered multiple fracture in the skull, leading to concussion of brain, blood clotting and nerves disfunction. She also suffered grievous injuries in the face and she under went treatment as inpatient in Ramachandra Medical College hospital from 22.03.2013 to 30.03.2013. The doctor, who deposed as P.W.2, stated about the various injuries and fracture suffered by the petitioner and assessed the disability at 30%. The disability certificate issued by him is produced as Ex.P5 and CT Scan Brain report and X-Rays taken by P.W.2 is produced as Exs.P4 and P6 respectively.

16. The nature of injuries suffered by the petitioner and the inpatient treatment under went by her is evidenced by Ex.P2, Discharge Summary. In such circumstances, considering the fact that the petitioner suffered multiple fracture and other grievous injuries and she is suffering from giddiness, due to the injuries suffered by her and on the basis of P.W.2, Doctor evidence, it would be appropriate to fix the disability suffered by her at 30%. It will be appropriate to award a sum at the rate of Rs.3,000/- per percentage and accordingly Rs.3,000x30=90,000/- is awarded under the head.

17. The petitioner, admittedly was working as a senior staff nurse in the Private Hospital as stated above and earning a monthly salary of Rs.23,000/-. She stated that she was not

able to work for about 4 months. However, there is nothing on record to show that she was on leave without pay. However, considering the reasons stated by the petitioner, she could not have attend to normal work atleast for 3 months. Hence, it will be appropriate to award a sum of Rs.23,000 x 3 = 69,000/- towards loss of earning during the treatment period. The fact, that the petitioner was under regular treatment and in view of the nature of injury suffered by her, it would be appropriate to provide her a sum of Rs.5,000/- towards Transport Expenses, for Extra nourishment Rs.20,000/-, Damage to Clothes Rs.1,000/-. The petitioner seeks a sum of Rs.2,00,000/- for the medical expenses incurred by her. However, she has not produced any medical bill to prove her claim in that regard. Considering the nature of injury suffered by her, it will be appropriate to award a sum of Rs.25,000/- towards medical expenses, Attender charges Rs.10,000/-, for Pain and Suffering Rs.50,000/-, for Loss of Amenities Rs.50,000/- totalling in ... Rs.3,20,000/-.

18. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl .N o.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs. 23,000.00	Rs. 69,000.00
2	Medical Expenses	Rs. 20,000.00	Rs. 25,000.00
3	Pain and Suffering	Rs. 40,000.00	Rs. 50,000.00
4	Transport to Hospital	Rs. 3,000.00	Rs. 5,000.00
5	Attender Charges	Rs. 10,000.00	Rs. 10,000.00
6	Extra Nourishment	Rs. 15,000.00	Rs. 20,000.00
7	Damage to clothes	Rs. 1,000.00	Rs. 1,000.00
8	Loss of amenities	Rs. 50,000.00	Rs. 50,000.00
9	Permanent Disability	Rs. 90,000.00	Rs. 90,000.00
10	Total	Rs.2,52,000.00	Rs. 3,20,000.00

19. In the result, the Civil Miscellaneous Appeal No.1668/2016 filed by the petitioner/appellant injured is Partly Allowed; C.M.A.No.274/2017 filed by the Insurance company is dismissed:-

(i) The award of the Tribunal is modified and enhanced from Rs.2,52,000/- to Rs.3,20,000/-

(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 modified 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 order.

(iv) On such deposit, the injured 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) Consequently, connected miscellaneous petition is closed.
No Costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bri

To

1.The II Court of Small Causes, Chennai.

2.The Section Officer,

V.R.Section, High Court, Madras.(2 coipes)

+ 1 cc to M/s. M. Swamikannu, Advocate Sr.9141

+ 1 cc to M/s. P.H. Manojpandian, Advocate Sr.9322

C.M.A.Nos.274 of 2017
and 1668 of 2016

CNR (CO)
EU (18/04/2018)

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