

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.573 of 2018

Lakshmi Devi

..Appellant/Petitioner

VS

1.S.Sudhakar

2.ICICI Lombard General Insurance company
Limited, No.140,
Nungambakkam High Road
Chennai-600 034

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 19.07.2016 made in MCOP.No.4499 of 2013 on the file of the Motor Accident Claims Tribunal, IV Court of Small causes, Chennai.

For appellant : Mr.K.Suryanarayanan
for Respondents : Mr.R.Sreevidhya for R2.
R1-Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 19.07.2016 made in MCOP.No.4499 of 2013 on the file of the Motor Accident Claims Tribunal, IV 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 is that on 07.05.2013 at about 14.45 hours, when the petitioner-Lakshmi devi was proceeding from North to South in CB Road, First Railway Bridge, Washermenpet, Chennai-21, the 1st respondent vehicle bearing Reg.No.TN-03-E-9523 which was insured with the 2nd respondent came in the opposite direction at high speed driven in a rash and negligent manner came to the wrong side of the road, dashed against the Petitioner causing her grievous injuries. The accident occurred only due to rash and negligent driving of the rider of the first respondent two wheeler. The Petitioner was aged 33 years and by doing cloth vending business was earning

Rs.300/- per day. As the petitioner suffered fracture and multiple internal as well as external injuries, she is unable to attend to her normal avocation which resulted in loss of income. Thus she claimed Rs.6,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 1st respondent-owner contends that the vehicle bearing Reg.No.TN-03-E-9523 was sold by him on 01.10.2012 itself to a Proprietary concern by name Sri.Mahalakshmi Motors who is having office at No.108/339, Ennore High Road, Korukkupet, Chennai-600 021 and on the date of the accident, he was not the owner of the vehicle. Thus, the 1st respondent sought for dismissal of the Petition as the vehicle does not belong to him.

4. Likewise, opposing the claim of the Petitioner by filing counter, the 2nd respondent-Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The 1st respondent violated the Policy condition by permitting a person without valid driving licence to drive the vehicle. The accident occurred due to the failure on the part of the petitioner in not following the traffic rules. The Petitioner contributed to the accident by crossing the road without noticing the traffic. The amount claimed by the Petitioner is highly excessive. The claim of the Petitioner about the age, avocation and income is denied. Thus, the 2nd respondent sought for dismissal of the Petition.

5. 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.6 to prove her claim. While the 1st respondent did not examine any witness, on the side of the 2nd respondent, R.W.1 and R.W.2 was examined, documents Ex.R.1 to Ex.R.4 was produced to contradict the claim of the Petitioner. The Tribunal, after carefully analyzing the evidence available on record, found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.58,000/- payable by the 2nd respondent.

6. Being not satisfied with the quantum of the award, the Petitioner/injured claimant has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the appellant/claimant contended

that the tribunal failed to appreciate the materials available on record properly and wrongly fixed the disability suffered by the Petitioner at 10% and awarded Rs.30,000/- only towards disability compensation. The Tribunal ought to have taken disability suffered by the Petitioner at 30% as fixed by P.W.2 doctor. The amount awarded by the Tribunal under different heads is very meager. Thus, the Petitioner sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the 2nd respondent/Insurance company contended that the Tribunal has wrongly fixed the liability on the 2nd respondent and passed award which is on higher side. As the accident occurred only due to negligence of the Petitioner/claimant, she is not entitled to seek for enhancement of the award. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

10. The Petitioner, who was injured in the accident while deposing as P.W.1 clearly stated that as she was going along C.B.Road, 1st Railway Bridge, Washermenpet, Chennai, from North to South, on 07.05.2013 at 14.45 hours, 1st respondent two wheeler bearing Reg.No.TN-03-E-9523 came at high speed in the opposite direction, dashed against her causing her multiple grievous injuries and fracture. The Police also registered Ex.P.1-FIR against the rider of the two wheeler only. The contents of the said FIR corroborates the oral version of the Petitioner about the manner in which the accident took place. In the absence of any contra evidence, considering the evidence of P.W.1 and contents of Ex.P.1 FIR, the Tribunal correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident.

11. The Petitioner/claimant contends that the vehicle belonged to the 1st respondent and the same was insured with the 2nd respondent. It is clear from Ex.R3 Copy of the Insurance Policy that the vehicle was insured with the 2nd respondent. However, the 1st respondent contended that he sold away the vehicle as early as on 01.10.2012 to Sr.Mahalakshmi Motors and on the date of the accident, the vehicle owner was the Proprietor of the said concern only. However, the 1st respondent failed to produce any proof to prove the change of ownership. It is clear from Ex.R.3- Copy of Insurance Policy that the vehicle was insured with the 2nd respondent by the 1st respondent. As such, in the absence of any material to prove the transfer of ownership, the Tribunal, on the basis of Ex.R.3 Insurance Policy, correctly concluded that the vehicle stood in the name of the 1st respondent on the date of the accident. As such, the respondents as the owner and insurer of the vehicle are liable to pay the compensation to the injured Petitioner.

12. The Petitioner/claimant/appellant further contends that she suffered fracture over left Zycoma Arch, contusion of the left hypochondial region, laceration in the left leg, facial injury, head injury and multiple internal and external injuries all over the body. Immediately after the accident, she took treatment as inpatient in Government Stanley Hospital, Chennai, from 07.05.2013 to 15.05.2013. The Petitioner produced Ex.P.2- Accident Register, Ex.P.3 - Wound Certificate and Ex.P.4 - Discharge summary to prove the nature of injury suffered and treatment taken as inpatient. According to the Petitioner/injured, due to the injury suffered, she is unable to carry on her normal avocation of sari and cloth selling business. The Petitioner also stated that she suffered physical pain and disability.

13. The Petitioner examined P.W.2 doctor who issued Ex.P.6- Disability Certificate to prove the factum of disability suffered by her. According to P.W.2 /Doctor, he examined the Petitioner and also took Ex.P.5-X ray to assess the nature of injury and disability suffered by the Petitioner. As per Doctor evidence, the Petitioner suffered Partial Permanent disability at 30%. However, P.W.2 has not filed any working sheet or guideline to substantiate the assessment. There is no evidence to show that the Petitioner was given treatment by P.W.2. However, there is no contra evidence let in by the 2nd respondent. In such circumstances, considering the fact that P.W.2 doctor did not assess the whole body disability, it will be appropriate to fix the disability suffered by the Petitioner at 20% instead of 10% fixed by the Tribunal. Thus, the compensation for the disability is calculated as follows:-

$20\% \times \text{Rs.}3000 = \text{Rs.}60,000/-$.

14. Considering the nature of fracture and the injuries suffered and that she took treatment as inpatient from 07.05.2013 to 15.5.2013, and that she underwent pain and suffering, it will be appropriate to award Rs.10,000/- towards Pain and suffering. The amount awarded by the Tribunal under other heads is found to be just and proper and hence, the same are confirmed. Accordingly, the modified compensation granted to the Petitioner is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	30,000	60,000
2.	Pain and suffering	7,500	10,000
3.	Extra Nourishment	2,000	2,000
4.	Transport to Hospital	2,000	2,000

5.	Damages to clothes	700	700
6.	Attender charges	1,800	1,800
7.	Medical expenses	5,000	5,000
8.	Loss of income	6,500	6,500
9.	Loss of Amenities	2,500	2,500
	Total	58,000	90,500/-.

15. In the result,

- (i) This Civil Miscellaneous Appeal is Partly Allowed;
(ii) The award amount is enhanced to Rs.90,500/- from Rs.58,000/-
(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation, except for the delay period 122 days in filing the above CMA.
(iv) The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.
(v) The injured appellant is entitled to withdraw the award amount along with accrued interest on filing proper application before the Tribunal. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
IV Court of Small causes, Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.38066

C.M.A.No.573 of 2018

VGII(CO)
GSP(18/09/2018)