

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.305 of 2017
and C.M.P.No.2198 of 2017

The Oriental Insurance
Co.Ltd., No.8, Esplanade
Chennai

..Appellant/2nd Respondent

vs

1.Krishnaveni ..1st Respondent/Petitioner
2.V.Janarthanam ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 25.08.2015 passed in M.C.O.P.No.1404 of 2009 by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For appellant : : Mr.J.Chandran
For Respondents : :
for R1 : : Ms.Ramya V.Rao
for R2 : : set exparte Lower court

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the 2nd respondent before the Tribunal viz., the Insurance Company, against the judgment and decree dated 25.08.2015 passed in M.C.O.P.No.1404 of 2009 by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners before the Tribunal as per their claim petition is that on 07.01.2009 at about 9.00 hours, while the minor petitioner was walking opposite to the Telephone Exchange, Kelambakkam, a Mahindra Van bearing Reg.No.TN-22-Z-7888, belonging to the first respondent insured with the 2nd respondent, driven by its driver, in a rash and negligent manner, hit behind the petitioner and the petitioner sustained grievous injuries. Hence, the Petitioner claimed compensation of Rs.5,00,000/- under various heads.

3. On the other hand, the 2nd respondent/Insurance Company opposed the petitioner's claim by filing a detailed counter. The 2nd respondent denied the validity of vehicle records, driving licence of the driver and stated that the claim under differed heads are highly excessive and pleaded for dismissal of the petition.

4. To substantiate the claim before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exhibits P.1 to P.10. The 2nd respondent/Insurance Company, neither examined any witness nor produced any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.4,00,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the first respondent and the 2nd respondent, being the insurer of the offending vehicle is liable to pay the compensation. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1.	Disability	Rs.3,00,000/-
2	Loss of expectation of life	Rs.1,00,000/-
	Total	Rs.4,00,000/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal. The learned counsel for the 2nd respondent/appellant contends that the compensation of Rs.4,00,000/- awarded by the Tribunal is highly excessive and the tribunal ought to have held that the negligence of the petitioner alone is responsible for the accident. Further, in view of the petitioner suffered only simple injuries, the assessment of disability at 30% assessed by P.W.2 doctor is unethical and the tribunal should have rejected the same. It is further contended that as the petitioner was treated only as out patient, the evidence of P.W.2 doctor and assessing permanent disability is not proper and his evidence should be ignored. The finding of the tribunal is not based on the material evidence available on record and thus the 2nd respondent seeks to set aside the same.

7. The petitioner claims that due to the rash and negligent driving of the driver of the 1st respondent vehicle, accident occurred on 07.01.2009. It is further claimed that when the minor petitioner was walking near telephone exchange, Kelambakkam, a Mahindra Van bearing Reg.No.TN22-Z-7888, owned by the 1st respondent and insured with the 2nd respondent came from behind and driven in a rash and negligent manner at high speed dashed against the petitioner resulting in grievous injuries to the petitioner/Krishnaveni. It is further stated that Ex.P.6 FIR is registered in respect of the said accident and the driver of the vehicle is blamed for the occurrence. There is nothing on record to contradict the same. Hence, on the basis of P.W.1 evidence and Ex.P.6 FIR, the conclusion arrived at by the Tribunal that the driver of the offending vehicle is responsible for the accident is proper and correct.

8. For the injuries sustained by the petitioner, based on P.W.2 doctor evidence and Ex.P.10 disability certificate, assessing the disability at 30%, the Tribunal awarded Rs.3,00,000/- under the head "disability"; a further sum of Rs.1,00,000/- under the head "Loss of expectation of life"; Altogether, the Tribunal granted a compensation of Rs.4,00,000/- for the injuries sustained by the petitioner. Exhibits marked on the side of the Petitioner viz., Ex.P.1-outpatient record issued by Chettinad hospital, Ex.P.2-Prescription, Ex.P.3 Outpatient record, Ex.P.4-Consultation Report, Ex.P.5-Medical bills, Ex.P.8-Photographs 2 with CD, Ex.P.-Xray and Ex.P.10-Disability Certificate, clearly shows that the petitioner sustained multiple injuries and the minor petitioner suffered disability at 30%. In such circumstances, it will be appropriate to award Rs.3000/- per percentage of permanent disability suffered by the petitioner, who was aged 16 years at the time of accident. Accordingly, under the head "Permanent disability", the compensation will be as follows:

Rs.3000/- x 30% = Rs.90,000/-.

Further the petitioner sustained multiple injuries and consequently suffered disability due to which she suffered pain and suffering. In such circumstances, it will be appropriate to award Rs.25,000/- under the head "Pain and Suffering". It is also seen that the petitioner was taking treatment continuously for her injuries and as such she could have spent some amount for transport expenses. As such, it will be appropriate to award Rs.10,000/- under the head "Transport expenses". Considering the nature of injury and treatment, this court is also inclined to award Rs.5000/- under the head "Attender Charges"; Rs.15,000/- under "Nourishment". Considering the nature of injury and treatment, it will be appropriate to award

Rs.15,000/- under the head "future medical expenses". Taking into account the evidence of the petitioner that due to her disability, she is facing serious health consequences, this court is of the view that some amount should be granted to the petitioner for loss of amenities. Accordingly, under the head "Loss of amenities", Rs.20,000/- is awarded. However, the Tribunal has awarded Rs.1,00,000/- to the petitioner under the head "Loss of Expectation of Life". Since there is nothing on record to substantiate the said compensation granted by the Tribunal, the same is set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs.3,00,000/- -	Rs.90,000/-
2	Pain and suffering	---	Rs. 25,000/-
3	Transport expenses	---	Rs.10,000/-
4	Attender charges	---	Rs. 5,000/-
5	Future medical expenses	---	Rs.15,000/-
6	Loss of amenities	---	Rs.20,000/-
7	Nourishment	---	Rs.15,000/-
	Total	Rs.4,00,000/- -	Rs.1,80,000/-

9. In the light of the foregoing discussion, the award of the Tribunal is modified and the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as stated infra:-

(1) The award granted by the Tribunal is reduced to Rs.1,80,000/- from Rs.4,00,000/-

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) This court by order dated 16.02.2017 directed the appellant/Insurance Company to deposit Rs.2,00,000/-. Therefore, excess amount, if any, in deposit can be withdrawn by the appellant/Insurance Company after satisfying the order of this court.

(4) The Petitioner/claimant is permitted to withdraw the entire modified award amount with accrued interest, by filing necessary application, less the amount if any already withdrawn by her.

(5) There will be no order as to costs in this appeal.

(6) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.

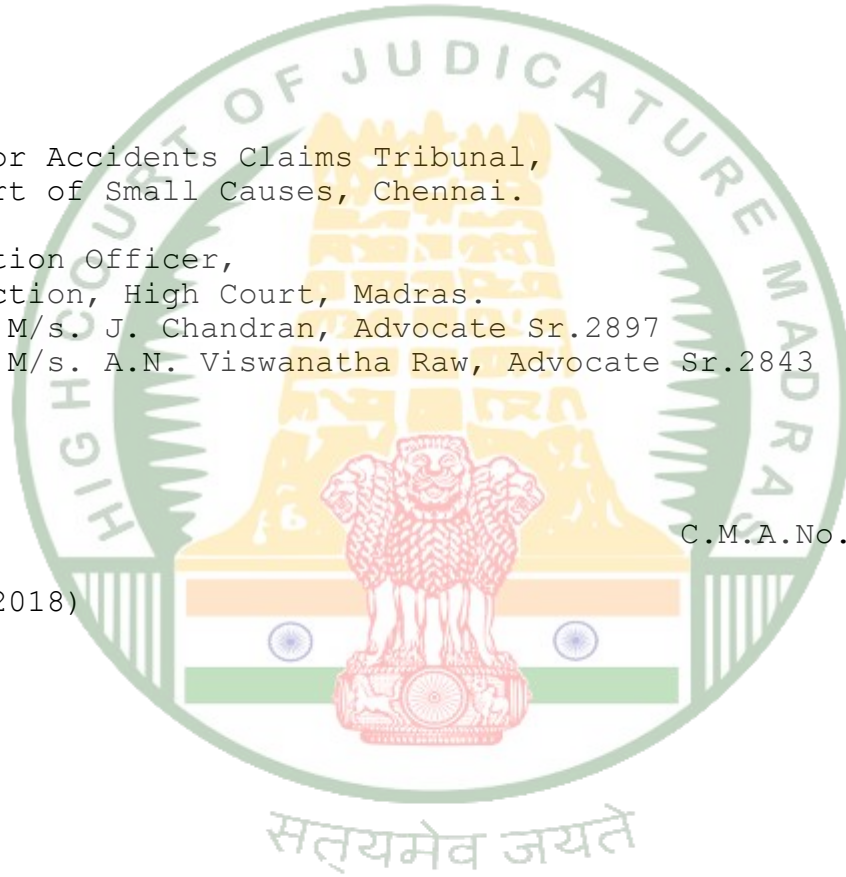
2.The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to M/s. J. Chandran, Advocate Sr.2897

+ 1 cc to M/s. A.N. Viswanatha Raw, Advocate Sr.2843

RSk(CO)
EU(19/02/2018)

C.M.A.No.305 of 2017



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