IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.781 of 2018

Rubilamary ...Appellant/Claimant

Versus

1.Faizal Hussain

2.United India Insurance Co.Ltd.,
Rep.by its Branch Manager,
No.2, Church Street,
Karaikal Town and District Munsif.
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award dated 09.01.2018 made in M.A.C.T.O.P.No.75 of 2013 on the file of the Motor Accident Claims Tribunal, District Judge at Karaikal.

For Appellant : Mr.T.Sai Krishnan

For Respondents : Mr.T.Ravichandran for R2

J U D G M E N T

The Appellant/petitioner has filed this appeal against the award dated 09.01.2018 made in M.A.C.T.O.P.No.75 of 2013 on the file of the Motor Accident Claims Tribunal, District Judge at Karaikal. With consent of both parties, the matter is disposed of at the time of admission stage itself.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 27.10.2012 at 18.00 hours, while the petitioner along with her daughter and husband were proceeding in a two wheeler bearing Registration No.PY-02-J-7002 at Bharathiar main road, Karaikal near Lemaire Street junction, the 1st respondent vehicle bearing Registration No.PY-02-K-2729 came at high speed driven in a rash and negligent manner, dashed against the two wheeler, in which the petitioner

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was travelling and consequently she was thrown out of the vehicle and suffered fracture in her mid Phalanx, fourth toe and injuries on her right leg and left knee and injuries all over her body. The accident occurred due to negligence of the 1st respondent vehicle driver only. The petitioner was aged 26 years and by working as a coolie was earning Rs.6,000/- per month. Due to fracture suffered in her leg, she is unable to work resulting in loss of income to her. Thus, the petitioner sought for Rs.5,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioner. The petitioner travelled in the two wheeler along with two other persons, in violation of traffic rules. In spite of sign board being placed in the Bharathiar road and Lemaire street cross road, the petitioner failed to look for oncoming traffic and crossed the road at high speed. If only the petitioner has slowed down at the junction of the road, she would have avoided the accident. The petitioner possess no valid driving license. The driver of the other vehicle also has no valid license. The claim of the petitioner is exorbitant. Thus, the 2nd respondent/Insurance Company 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 Exs.P.1 to P.13 to prove her claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found negligence on the part of the 1st respondent vehicle driver alone caused the accident and passed award for a sum of Rs.15,000/- payable by the respondents to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the petitioner contends that the Tribunal erred in fixing the monthly income earned by the petitioner. The Tribunal also failed to appreciate that the injury suffered by the petitioner in the fourth toe is grievous in nature. The petitioner also suffered permanent scar and fracture due to the injury suffered in the accident. Thus, the petitioner sought for enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contended that the accident occurred only due to negligence of the petitioner and as such, she is not entitled to ask for any compensation. It is further

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contended that the award passed by the Tribunal itself is on the higher side, as there is no permanent disability suffered by the petitioner. There is no scope for increasing the quantum of the award. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. Heard both sides and perused the available materials on record.

9. The petitioner, who deposed as P.W.1, stated that the accident occurred only due to negligence of the rider of the two wheeler owned by the 1st respondent. According to her, while she was going along with her daughter and husband in the two wheeler from South to North, near the junction of Lemaire Street and Bharathiar road, the 1st respondent vehicle bearing Registration No.PY-02-K-2729 came from West-East at high speed and dashed against the two wheeler which the petitioner was riding. According to the petitioner as the accident occurred due to negligence of the 1st respondent driver, the police registered a case in Crime No.144/2012 as evidenced by Ex.P.1 – F.I.R against the rider of the 1st respondent vehicle only. Thus, it is evident from oral evidence of P.W.1 as well as Ex.P.1 – F.I.R that the accident occurred due to negligence of the 1st respondent rider only. There is no contra evidence let in by the respondents to contradict the version of accident given by P.W.1. As such, it is clear from the evidence of P.W.1 and Ex.P.1 – F.I.R contents that the accident occurred only due to negligence of the 1st respondent vehicle rider.

10. The petitioner states that he suffered fracture on her mid Phalanx, 4th toe and injuries on the right leg and left knee which are grievous in nature. Immediately, after the occurrence she took treatment as inpatient in General Hospital, Karaikal and in proof of the same produced Ex.P.5 – Accident Register, Ex.P.7 – Discharge summary issued by G.H, Karaikal. The petitioner states that due to the injury suffered in her leg, forth toe was amputated and being employed as coolie, she is finding it difficult to attend to her avocation. Further, the petitioner examined the Doctor, who examined and assessed the disability suffered by her as P.W.2 and he states that the partial permanent disability suffered by the petitioner is 20%. The disability certificate issued by P.W.2 is marked as Ex.P.12. It is clear from Ex.P.9 – photograph of injured foot, that the fourth toe of the petitioner is amputated. As per the opinion of the Doctor, who gave treatment to the petitioner in G.H, Karaikal, the nature of injury suffered by the petitioner is grievous. As such, taking into account, the injury suffered by the petitioner, the period of treatment and also the disability assessed by P.W.2 and Ex.P.12 – disability certificate, it is just and proper to fix the disability suffered by the petitioner

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at 20%. The Tribunal awarded Rs.1,000/- per percentage as compensation for the same. However, considering the nature of injury suffered and the fact that the fourth toe of the petitioner is amputated, it will be difficult for her to carry on her avocation, it will be just and proper to compensate her at a rate of Rs.3,000/- per percentage of the disability suffered by her. Thus, the compensation for the partial permanent disability is calculated as Rs.3,000 * 20 = Rs.60,000/-.

11. It is clear from Ex.P.7 – Discharge summary and other documents produced by the petitioner that she has undergone treatment as inpatient in the hospital and subsequently she has taken treatment in G.H, Karaikal, as well as K.S.Orthopaedic Centre, Karaikal. Ex.P.10 – Discharge slip and Ex.P.7 – Discharge summary disclose the same. Further, the petitioner has to be provided for transport charges and accordingly Rs.10,000/- is granted towards transportation expenses. The Tribunal has awarded amount under various heads including medical expenses and the same appears to be just and fair. Apart from the above said modifications, the amount granted by the Tribunal under other heads needs no interference. Thus, in view of the above said discussions, this court modifies the award passed by the Tribunal as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court(Rs.)
1	Permanent Disability	20,000.00	60,000.00
2	Transport Charges	-	10,000.00
3	Medical Expenses	10,500.00	10,500.00
4	Pain and Suffering	20,00.00	20,000.00
5	Extra Nourishment	5,000.00	5,000.00
6	Loss of Income	1,500.00	1,500.00
7	Total	57,000.00	1,07,000.00

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15. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.1,07,000/- from Rs.57,000/-.

(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.

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(iii) In view of the above 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 judgment.

(iv) On such deposit, petitioner/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) Petitioner/appellant shall pay necessary court fee before receiving the copy this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bri

To

1.The District Judge,
Motor Accident Claims Tribunal,
Karaikal.

2.The Section Officer,
V.R.Section, High Court, Madras.[2 copies]

+1cc to Mr.T.Sai Krishnan, Advocate Sr.26727
+1cc to Mr.T.Ravichandran, Advocate Sr.26692

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