

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.522 of 2014, 2788 of 2013 and 618 of 2015

C.M.A.No.522 of 2014:

Shanthi

..Appellant/Petitioner

C.M.A.No.2788 of 2013:-

Gowri

..Appellant/Petitioner

C.M.A.No.618 of 2015:-

Akila

..Appellant/Petitioner

Vs.

1.Vedha

2.M/s.Subathra Spinning Mills Private Ltd.,

No.201, Judicial Officers Lay Out,

RMV 2nd Stage

Sanjay Nagar

Bangalore.

(R2 remained exparte before the Tribunal.)

3.The Divisional Manager

National Insurance Co.Ltd.,

No.19, Officers Line

Vellore.

4.The Manager

Royal Sundaram Alliance Insurance Co.Ltd.,

No.46, Whites Road

Chennai-600 014

..Respondents 1 to 4/
Respondents 1 to 4

Prayer in C.M.A.No.522 of 2014:-

Civil Miscellaneous Appeal filed against the Judgment and Decree made in M.C.O.P.No.433 of 2004 dated 31.05.2011, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

Prayer in C.M.A.No.2788 of 2013:-

Civil Miscellaneous Appeal filed against the Judgment and Decree made in M.C.O.P.No.430 of 2004 dated 31.05.2011, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

Prayer in C.M.A.No.618 of 2015:-

Civil Miscellaneous Appeal filed against the Judgment and Decree made in M.C.O.P.No.432 of 2004 dated 31.05.2011, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellants/claimants in : M/s.M.Malar Appeals

For Respondents in all Appeals : Ms.N.B.Surekha for R3.

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed against the Judgment and Decree made in M.C.O.P.No.433, 430, 432 of 2004 dated 31.05.2011, on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioners is that on 07.11.2003 around 6.15 a.m., at Thiruvannamalai-Chengam Road, in between Erayur and Uchimalaikupam, while the petitioners were travelling in a Maxicab bearing Reg.No.KA-04-MA-2332, the lorry bearing Reg.No.TAX-9392 driven by its driver in a rash and negligent manner came at high speed, dashed against the said Maxicab, due to which, the petitioners sustained grievous injuries. The Petitioners claimed that due to the injuries sustained by them in the accident, they are suffering from permanent disability and sought compensation of Rs.5,00,000/- each.

3.1. The Petitioner in M.C.O.P.No.433 of 2004 contends that she was aged 20 years at the time of accident and by working as Cooly in the 2nd respondent-Spinning Mill, she was earning Rs.3000/- per month.

3.2. The Petitioner in M.C.O.P.No.430 of 2004, contends that she was aged 19 years and by working as cooly in the 2nd respondent-Spinning Mill, was earning Rs.3000/- per month.

3.3. The Petitioner in M.C.O.P.No.432 of 2004 contends that she was aged 19 years and by working as cooly in the 2nd respondent-Spinning Mill, was earning Rs.3000/- per month.

4. On the other hand, opposing the claim of the Petitioners, the 3rd respondent/National Insurance Company contends that the alleged manner of the accident is incorrect. There is long delay in preferring the complaint to the police. The accident register containing the details of injuries sustained by the Petitioners revealed that there were only simple injuries and they were discharged on the same day of admission. The claim against them/3rd respondent is unjust, unrealistic and excessive. Hence, the 3rd respondent-National Insurance company seeks dismissal of all the petitions.

5. The 4th respondent-Royal Sundaram Alliance Insurance Company filed written statement before the Tribunal and stated that the averments relating to details of the accident, allegation relating to sustaining of grievous injury and the medical treatment given to the petitioners are to be proved by the Petitioners. The claim of the Petitioners for a sum of Rs.5,00,000/- as compensation is excessive. It is also stated that the negligence of the driver of the lorry bearing Reg.No.TAX-9392 belonging to the 1st respondent and insured with the 3rd respondent is responsible for the accident and therefore, 4th respondent is not liable to pay any compensation. Thus, the 4th respondent sought for dismissal of the Petition.

6. Before the Tribunal, the 2nd respondent remained exparte. The Petitioners examined P.W.1 to P.W.5 and produced documents Ex.P.1 to Ex.P.26 to prove their claim. On the side of 1st and 3rd respondents, R.W.1 was examined and document Ex.R.1 was produced. The Tribunal, after considering the evidence both oral and documentary available on record, found that the negligence on the part of the 1st respondent owned lorry driver alone caused the accident and held that the 1st and 3rd respondents are jointly and severally liable to pay compensation to the petitioners as detailed in the impugned order. Being not satisfied with the quantum of award passed by the Tribunal, the appellants/claimants have come forward with the present appeals.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the

Appellants/Petitioners/Claimants contended that the Tribunal failed to consider the age of the injured. At the time of the accident, the appellants/Petitioners were aged 20, 19 and 19 respectively and they sustained injuries and taken treatment in Government Hospital, Thiruvannamalai, and then was referred to Sri Ramachandra Hospital, Chennai, and taken treatment. The Tribunal ought to have awarded more compensation separately under the head "transport expenses". The Tribunal reduced the disability percentage and awarded compensation and the same is not correct. The Tribunal ought to have awarded reasonable compensation under the head "medical expenses". The Tribunal failed to award any compensation amount under the head "mental agony". The Tribunal ought to have awarded compensation under the head "loss of amenities" as the Petitioners not able to attend to any work as done earlier. Thus the Petitioners sought for enhancement of the award amount by entertaining the appeals.

9. The learned counsel for the 3rd respondent/Insurance Company contends that the Tribunal failed to appreciate properly the evidence produced by the 3rd respondent and wrongly concluded that negligence of the driver of the 1st respondent lorry alone caused the accident. The Tribunal also failed to consider the Investigation Report filed as Ex.R.1 by the 3rd respondent to prove the nature of accident. The finding of the Tribunal that the 1st respondent Lorry driver alone was responsible for the accident is not proper. Hence, the 3rd respondent/Insurance Company seeks to dismiss the appeals.

10. The eyewitness to the accident, who deposed as P.W.1 to 4 have spoken about the manner in which the accident occurred. The Police have registered Ex.P.1-FIR against the 1st respondent Lorry driver only. To contradict the same, the 3rd respondent examined R.W.1 and also produced the Investigation report as Ex.R.1. Admittedly, R.W.1 is not an eyewitness to the occurrence. It is pointed out that criminal case is registered against the 1st respondent lorry driver and the same is pending. The contents of the FIR makes it very clear that the negligence of the Lorry driver alone caused the accident.

11. The Tribunal considered Ex.R.1-Investigation Report and held that it is stated that the 2nd respondent vehicle bearing Reg.No.KA-04-MA-2332 was driven by Kamaraj and the Lorry bearing Reg.No.TAX-9392 was driven by Vedan, however, these two drivers have not been examined on the side of respondents 1, 3 and 4. R.W.1 in his evidence has stated that the Lorry involved in the accident was stationary and it was not running, but the van driver in order to avoid the accident against a bus coming in

the opposite direction, dashed against the Lorry and the accident occurred. He further stated that the FIR registered against the 1st respondent Lorry driver is incorrect. However, it is also stated by R.W.1 that he has not seen the accident in person, but deposing on the basis of documents perused by him. The Tribunal, after going through the entire evidence of R.W.1 held that R.W.1 is not the eyewitness to the accident and Officers who prepared Ex.R.1 were not examined on the side of 3rd respondent. It is further pointed out that the driver of Maxi cab owned by the 2nd respondent and the driver of the Lorry owned by the 1st respondent were having valid driving licence. Further, the evidence of P.Ws.1 to 4 clearly stated that due to the 1st respondent Lorry parked in the midway of the road without any red light indication only caused the accident. There was no variation in the evidence deposed by P.Ws.1 to 4 and therefore, the accident occurred only due to the sudden brake applied by the 1st respondent Lorry driver is established.

12. As far as MCOP.No.430 of 2004 is concerned, the Petitioner Gowri sustained injuries and was admitted in Thiruvannamalai Government Hospital for treatment. The same is proved by Ex.P.3-Accident Register. It is clear from Ex.P.3-Accident Register copy that the Petitioner Gowri suffered four injuries and except Injury No.3 and the other injuries are simple in nature. It is also evident that the petitioner was admitted for further treatment at Sri Ramachandra Hospital, Porur, Chennai, on the accident date and thereafter, discharged on 11.11.2003 as per Ex.P.4-Discharge summary. The Tribunal, on a finding that there was no documents produced in support of medical claim, awarded compensation of Rs.40,000/- towards medical expenses, Rs.10,000/- towards Pain and suffering. P.W.6 medical expert in his evidence stated that on examination, he found that the injury in the nose resulted in deformation of nose bones and the petitioner is suffering from breathing problem and having pain. P.W.2 assessed 30% disability and produced Ex.P.20 in this regard. However, he further deposed that he treated her after two years of the accident. The Tribunal, awarded Rs.15,000/- for the permanent disability and Rs.3000/- for the loss of income during the period of treatment. Altogether, the Tribunal awarded Rs.68,000/- as compensation.

13. In MCOP.No.432 of 2004, the Tribunal, on the basis of Ex.P.11-Accident Register, wherein, two injuries are shown, it was pointed out that the 1st injury is simple and 2nd injury is grievous one and that was also established by Ex.P.12-Injury Certificate. It is also seen that the petitioner was admitted on 07.11.2003 and after treatment discharged; thereafter again for treatment admitted in Ramachandra Hospital, Porur, Chennai,

on 08.11.2003 and discharged on 10.11.2003. In view of the above, the Tribunal awarded Rs.40,000/- towards medical expenses, Rs.10,000/- towards Pain and suffering. P.W.5 medical expert in his evidence has stated that due to injuries sustained, the petitioner is facing difficulty in breathing and assessed 15% partial permanent disability. The Tribunal, awarded Rs.15,000/- towards partial permanent disability and Rs.3000/- for loss of income during the period of treatment. Altogether, the Tribunal awarded Rs.68,000/- as compensation.

14. In MCOP.No.433 of 2004, the Petitioner Santhi was examined as P.W.3 and she stated that she was admitted in Thiruvannamalai Government Hospital for treatment and she sustained three grievous injuries in the accident. She also deposed that she has taken further treatment at Sri Ramachandra Medical Hospital, Porur, Chennai. However, no medical records were produced by the Petitioner. Hence, the Tribunal granted Rs.15,000/- towards medical expenses. On a perusal of Ex.P.3-Accident Register, the Tribunal finding out that the petitioner sustained three injuries, awarded Rs.5,000/- towards pain and suffering. P.W.5 Medical expert in his deposition has stated that he examined the petitioner on 27.05.2011 and taken X-ray and found that there is one grievous injury in the backside of the neck. But it is also stated that only after 7 years of the accident and therefore, he could not say that the partial permanent disability caused only due to the accident occurred on 07.11.2003. However, he produced Ex.P.21 and Ex.P.22 assessing 15% partial permanent disability. The Tribunal, in this regard, awarded Rs.10,000/- for the partial permanent disability. The Tribunal further awarded Rs.3000/- for loss of income during period of treatment. Altogether, the Tribunal awarded Rs.33,000/- as compensation.

15. To sum up, the Tribunal, thus awarded Rs.68,000/- in MCOP.No.430 of 2004; Rs.68,000/- in MCOP.No.432 of 2004 and Rs.33,000/- in MCOP.No.433 of 2004. Aggrieved by the said quantum of award, the Petitioners/claimants have come before this court with the present appeals seeking higher compensation.

16. The learned counsel for the appellants/Petitioners/claimants contended that the petitioners sustained serious injuries and they faced mental agony. The injured face was disfigured and their marriage prospects are affected due to the accident. It is further contended that the Tribunal failed to award any amount under the head loss of amenities and the injured was not able to breathe and their smelling sense also lost.

17. On a perusal of the award and the nature of injuries stated by the Petitioners, this court is of the considered view that the Petitioners herein viz., Shanthi, Petitioner in MCOP.No.433/2004 was aged 20 years; Gowri, Petitioner in MCOP.No.430 of 2004 was aged 19 years and Akila, Petitioner in MCOP.No.432 of 2004 was aged 19 years at the time of accident, and they being females, in the marriageable age, definitely due to the injuries sustained by them, their marital prospects would have been affected. Further due to Partial permanent disability suffered by them, the Petitioners' future prospects will be diminished. In such circumstances, this court is inclined to modify the award passed by the tribunal. This court is inclined to grant Rs.10,000/- towards loss of amenities and Rs.10,000/- towards loss of marital prospects for the Petitioners in MCOP.Nos.430 of 2004 and 432 of 2004. However, in respect of MCOP.No.433 of 2004, the Tribunal pointed out that the Petitioner has not produced any medical records to substantiate the injury suffered and the treatment taken in that regard. However, P.W.5 doctor who treated the petitioner on 27.05.2011 for the accident occurred on 07.11.2003 produced Ex.P.21- disability certificate, assessing 15% disability. Taking into consideration all the above aspects, this court is inclined to award Rs.10,000/- towards loss of amenities and Rs.5,000/- towards loss of marital prospects. In other aspects, the award passed by the Tribunal is confirmed.

18. In the result, the Civil Miscellaneous Appeals are Partly allowed and award amount stand enhanced as shown below:-

MCOP.No/CMA.No.	Award of the Tribunal	Award of this court
MCOP.No.430/2004 CMA.No.2788/2013	Rs.68,000/-	Rs.88,000/-
MCOP.No.432/2004 CMA.NO.618/2015	Rs.68,000/-	Rs.88,000/-
MCOP.No.433/2004 CMA.NO.522/2014	Rs.33,000/-	Rs.48,000/-

(2) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(3) The 3rd respondent/National Insurance Company is directed to deposit the award amount with proportionate interest and cost, 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;

(4) On such deposit, the Appellants/Petitioners/claimants are permitted to withdraw the amount awarded as above, with accrued interest, less the amount if any already withdrawn, 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. In view of the order of this court dated 24.02.2015 and 07.08.2013 passed in M.P.No.1 of 2013 in CMA.SR.No.86794 of 2012 and M.P.No.3 of 2013 in CMA.SR.No.86803 of 2012, the Appellants/Petitioners are not entitled to interest for the enhanced award amount, for the delay period of 309 days. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Thiruvannamalai.

Copy to
The Section Officer,
VR Section, High court,
Madras (2 copies)

+3ccs to Ms.N.B.Surekha, Advocate, S.R.No.5001, 5002, 5000
+3ccs to M/s.M.Malar, Advocate, S.R.No.5073, 5074, 5075

C.M.A.Nos.522 of 2014, 2788 of
2013 and 618 of 2015

rsy(co)
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