

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.992 of 2018

S.Sujatha

..Appellant/Petitioner

Vs.

1.M.Hariharan

2.Bajaj Allianz General Insurance Company Limited

Prince Towers, 4th Floor,

25-26, College Road

Nungambakkam, Chennai-6

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.4.2014 made in MCOP.No.2296 2011 on the file of the Motor Accident Claims Tribunal V Judge, Court of Small Causes, Chennai.

For appellant : : M/s.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

for Respondents : : Mr.T.K.Premkumar for R2.
R1 remained exparte before Lowr Court

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/injured Petitioner, challenging the judgment and decree dated 11.4.2014 made in MCOP.No.2296 of 2011 on the file of the Motor Accident Claims Tribunal V Judge, 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-S.Sujatha is that on 14.06.2011 at about 19.20 hours, while the Petitioner was proceeding as a Pillion rider in the motor cycle bearing Reg.No.TN-06-B-0434 from Palliakarani to Triplicane in the Velachery Main Road, while going near Vijayanagar Junction, the 1st respondent car bearing Reg.No.TN-05-M-7783 came at high speed, driven in a rash and negligent manner, dashed against the

two wheeler, in which the Petitioner was travelling as a pillion rider and causing her grievous injuries all over her body. The accident occurred due to negligence of the 1st respondent vehicle driver only. The Petitioner by doing Saree Business was earning Rs.6000/- per month. Having suffered multiple grievous injuries and fracture, she is unable to carry on her avocation resulting in loss of income. Thus the Petitioner sought for a sum of Rs.5,00,000/- as compensation from the respondents.

3. On the other hand, 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. On the other hand, the accident took place only due to rider of the two wheeler in which the petitioner was proceeding as a pillion rider. The claim of the Petitioner about her age, avocation and income is denied. The claim of the Petitioner under different heads is highly excessive. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined herself as P.W.1 and the medical witness as P.W.2, produced documents Ex.P.1 to Ex.P.11 to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, after analysing the evidence on record, found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.2,07,025/- payable by the respondents to the Petitioner.

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

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Petitioner/appellant contends that the Petitioner having suffered linear undisplaced fracture of the right fronto temporal bone with adjacent soft tissue haematoma and multiple injuries all over the body, the Tribunal ought to have fixed the disability compensation at higher level. The Tribunal erred in fixing the notional monthly income at Rs.4500/- instead of Rs.6000/- per month. The amount awarded under different heads is very nominal. The Petitioner is unable to attend to her work due to the injuries suffered, resulting in loss of income. Thus, the Petitioner sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the 1st respondent vehicle driver is not responsible for the accident and the claim of the Petitioner/appellant that she was earning Rs.6000/- per

month by doing Saree business is highly excessive and not supported by any evidence. The Tribunal award itself is highly excessive. Thus, the 2nd respondent sought for dismissal of the appeal stating that no ground is made out to enhance the quantum of the award passed by the Tribunal.

9. It is only quantum appeal. Both sides have not disputed the finding of the Tribunal regarding negligence aspect. In the case on hand, the Petitioner herself deposed as P.W.1 and categorically stated that the accident occurred only due to rash and negligent driving of the 1st respondent vehicle driver. The Police registered Ex.P.9 FIR against the driver of the 1st respondent car only. The respondents have not let in any oral or documentary evidence to contradict the claim of the Petitioner. As such, on the basis of P.W.1 oral evidence and the contents of Ex.P.9-FIR, it is clear that the accident occurred only due to negligence of the 1st respondent vehicle driver. The conclusion of the Tribunal to that effect is just and proper and the same is confirmed.

10. Admittedly, the offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

11. The Petitioner who deposed as P.W.1 stated that she suffered fracture and multiple injuries. To prove the same, she produced Ex.P.2-AR Copy and also Ex.P.6 and Ex.P.7 CT Scan and Scan Report respectively. The doctor, who assessed the disability suffered by the Petitioner deposed as P.W.2. After physically examining the Petitioner, he fixed the partial permanent disability suffered by her at 35%. The doctor produced disability certificate as Ex.P.10 and X ray taken by him as Ex.P.11. Since, P.W.2 has not given treatment to the Petitioner and no calculation sheet was filed by him along with his report, the Tribunal keeping in mind the head injury and the fracture of right temporal bone suffered by the Petitioner, fixed the disability at 30% instead of 35%. Considering the same, this court is of the view that the Tribunal is justified in fixing the disability at 30% and the compensation awarded under the head "disability" at the rate of Rs.3000/- per percentage of disability is reasonable. In the absence of any other evidence to show that the Petitioner suffered functional disability, there is no need to apply multiplier method. Thus, the Tribunal rightly adopted Percentage method as Rs.3000/- x 30% and awarded Rs.90,000/- as compensation, which needs no interference.

12. Admittedly, the Petitioner having suffered fracture and other injuries could not have attended her Saree Business for

atleast six months. In the absence of any proof of her monthly income, the Tribunal fixed Rs.4500/- per month. Taking into consideration the accident is of the year 2011, it will be appropriate to fix Rs.5000/- as monthly income. Due to the fracture suffered by the Petitioner, she could not have carried on business atleast for six months. Therefore, the loss of income for the period of six months is calculated as Rs.5000/- x 6 months = Rs.30,000/-. The Petitioner having suffered fracture and multiple grievous injuries would have needed assistance of an attender for carrying out her regular work. Thus, it will be appropriate to provide Rs.15,000/- under the head "Attender charges" instead of Rs.5000/- provided by the Tribunal. Considering the period of treatment, it would be appropriate to award Rs.5000/- towards Transportation charges. For Extra Nourishment, as stated by the Petitioner counsel, it will be appropriate to enhance the amount from Rs.5000/- to Rs.15,000/-. The sum of Rs.50,000/- granted under the head "Pain and suffering" is reasonable and hence, the same needs no interference. Considering the age of the Petitioner i.e., 23 years and she being a lady, a sum of Rs.50,000/- is granted under the head "loss of amenities".

13. The learned counsel for the Petitioner contended that the Petitioner is in need for future medical expenses, but no estimation towards future medical expenses is provided. As such, considering the nature of injury and other attendant circumstances, this court is inclined to grant Rs.10,000/- towards future medical expenses. Thus, the award passed by the Tribunal is modified as follows:-

Sl.No .	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court. (Rs.)
1.	Disability	90,000	90,000
2.	Loss of income for the treatment period	18,000	30,000
3.	Transportation	5,000	5,000
4.	Extra nourishment	5,000	15,000
5.	Damage to clothes	1,000	1,000
6.	Medical expenses	8,025	8,025
7.	Attender charges	5,000	15,000
8.	Pain and suffering	50,000	50,000
9.	Loss of amenities	25,000	50,000
10.	Future Medical expenses	---	10000
	Total	2,07,025/-	2,74,025/-

14. In the result, this Civil Miscellaneous Appeal is Partly Allowed. The award amount is enhanced from 2,07,025/- to Rs.2,74,025/-. The Petitioner-injured/Appellant in this CMA is entitled to compensation of Rs.2,74,025/- [Rupees Two Lakhs Seventy Four thousand and twenty five only]. The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 2nd respondent-Insurance company is directed to deposit the award amount of Rs.2,74,025/- along with interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure. As per order of this court dated 05.04.2018 passed in CMP.NO.12526/2017 in CMA.SR.58954 of 2017, the appellant/injured Petitioner is not entitled to interest for the delay period of 1099 days in filing the above CMA. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

The V Judge,
Motor Accident Claims Tribunal
Court of Small Causes, Chennai.

Copy To

The Section Officer,
VR Section, High Court, Madras.(2 copies)

+1cc to Mr.T.K.Premkumar, Advocate, S.R.No.38814

C.M.A.No.992 of 2018

SS(CO)
CS/02/11/2018

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