

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2080 of 2018

Usha Devi

... Appellant/Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Ramakrishna Road,
Salem.

2.K.S.Selvaraj

3.United Indian Insurance Company,
rep. by its Manager,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 03.07.2012 passed in M.C.O.P.No.22 of 2008 by the Motor Accidents Claims Tribunal (Sub Court), Hosur.

For Appellant : Mr.D.Ramesh Kumar

For Respondents: Mr.T.Ravichandran
for 3rd respondent

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.10,71,000/- awarded by the Tribunal for the injuries sustained by her in the accident, the appellant has preferred the present Civil Miscellaneous Appeal seeking enhancement of compensation to the tune of Rs.7,29,000/-.

2. The appellant is the claimant and she filed the claim petition claiming compensation of Rs.18,00,000/- for the injuries sustained by her in the accident occurred on 17.10.2007.

3. According to the appellant, on 17.10.2007, she was travelling from Hosur to Salem in the first respondent's bus and

at that time, the driver of the lorry bearing registration No.TN-28 P 5496 drove the same in a rash and negligent manner and dashed against the bus. Due to the impact, the appellant had sustained crush injury with scattered mid facial skeleton - nose was lacerated into multiple fragment. Immediately after the accident, the appellant was admitted in Manipal Hospital, Salem and thereafter, she had taken treatment at various hospitals at Salem and Chennai respectively.

4. The case of the appellant is that at the time of accident, she was working as Headmistress in Municipal School, Annasagaram and was earning Rs.14,000/- per month. Due to injuries, the appellant had sustained defective vision and her vision was reduced despite operation of the left eye. Stating that the accident occurred due to rash and negligent driving of the driver of the lorry, the appellant has filed the claim petition.

5. The first respondent filed counter stating that at the time of accident, the driver of the lorry drove the same in a rash and negligent manner without following rules of the road came in the opposite direction and dashed against the bus and due to the impact, the appellant had sustained injuries. Thus, the accident occurred only due to the negligent driving of the driver of the lorry and therefore, the first respondent is not liable to pay the compensation.

6. Denying the manner of accident, the third respondent filed the counter stating that the driver of the lorry drove the same slowly and cautiously from Salem to Dharmapuri on the date of accident and when the lorry was proceeding at Teevattipatti, the Tamil Nadu State Transport Corporation Bus came in the opposite direction with high speed in a rash and negligent manner dashed against the lorry. Thus, the accident occurred due to the negligence of the TNSTC bus driver. Hence, the third respondent is not liable to pay the compensation.

7. Before the Tribunal, the appellant examined herself as P.W.1 and Dr.Gandhi was examined as P.W.2 and Exs.P1 to P31 were marked. On the side of the contesting respondents, no oral and documentary evidence was adduced.

8. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the second respondent's lorry and the third respondent who is the insurer of the offending lorry is liable to pay the compensation. Taking the disability at 50%, the Tribunal awarded total compensation of Rs.10,71,000/- payable with interest at the rate of 7.5% per annum. Challenging the quantum, the appellant has filed the present appeal.

9. I heard Mr.D.Ramesh Kumar, learned counsel for the appellant and Mr.T.Ravichandran, learned counsel for the third respondent.

10. Assailing the quantum, the learned counsel for the appellant submitted that the Tribunal failed to apply its mind over the issue of 50% permanent disability due to lack of vision on left eye and loss of four upper teeth and consequence lack in speech. He would submit that the Tribunal ought to have applied multiplier method to compute just compensation to place the appellant in terms of money for the injuries of disfigurement of face and loss of four teeth and vision on left eye.

11. The learned counsel further submitted that the Tribunal erred in not awarding compensation on the head attender charges. The learned counsel would submit that the amounts awarded by the Tribunal under the heads extra-nourishment, transport charges are very low and the same have to be enhanced considerably.

12. Per contra, the learned counsel for the third respondent submitted that the Tribunal after analysing the oral and documentary evidence produced before it, awarded reasonable compensation and there is no need to enhance the same.

13. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

14. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the third respondent is liable to pay the compensation to the appellant. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the third respondent to pay the compensation is confirmed.

15. The only point that arises for consideration in this appeal is whether the compensation awarded by the Tribunal is just and reasonable.

16. In the accident, the appellant had sustained the following injuries:

- (i)Crush injury with scattered mid facial skeleton - nose was lacerated into multiple fragment.
- (ii)Nasal septum and both nasal bone shattered.
- (iii)Irregular laceration left side upper limb 3 x 4cm.

- (iv) Irregular laceration right left chin 3 x 3cm.
- (v) Irregular laceration right ear lobule 2 x 1cm.
- (vi) Haematoma over right temple.
- (vii) Left eye hyphaema - hypotony - scleral tear.

17. In her evidence, P.W.1 deposed that after the accident, she was admitted in Manipal Hospital, Salem on 17.10.2007 and discharged on 22.10.2007. Thereafter, she had taken further treatment at SKS Hospital, Salem from 22.10.2007 to 30.10.2007 and she had also taken treatment at Vasan Eye Care, Salem, where she was advised to undergo RD surgery and Pars Plana Vitrectomy. P.W.1 further deposed that subsequently she had taken treatment in PREMS Eye Care, Chennai from 31.10.2007 to 01.11.2007 as inpatient. During treatment, operation was done and till date she was taking treatment privately as inpatient. P.W.1 also deposed that due to injury over the eye and loss of teeth, she could not able to her teaching work as before.

18. P.W.2-Doctor examined the appellant and issued Ex.P31-disability certificate assessing the disability at 50%. The evidence of P.W.2-Doctor and Ex.P31-disability certificate have not been seriously disputed by the third respondent.

19. The learned counsel for the appellant argued that since the appellant had sustained 50% disability, the Tribunal ought to have applied multiplier method to compute just compensation.

20. On a perusal of the award, this Court finds that the Tribunal has taken the disability at 50% and awarded Rs.1,00,000/- towards disability by taking Rs.2,000/- per percentage of disability. Considering the nature of injuries and also disablement suffered by the appellant, this is not a fit case to adopt multiplier method.

21. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, the Hon'ble Apex Court has considered Rs.3,000/- per percentage of disability. Following the decision of the Apex Court in National Insurance Company Ltd. v. G.Ramesh, supra, this Court is inclined to take Rs.3,000/- per percentage of disability. Taking the disability at 50%, an amount of Rs.1,00,000/- awarded by the Tribunal is enhanced to Rs.1,50,000/- towards permanent disability.

22. The Tribunal awarded Rs.1,00,000/- for pain and suffering; Rs.8,51,000/- for medical expenses; Rs.10,000/- for transport charges and Rs.10,000/- for extra-nourishment. The appellant had produced Ex.P26-medical bills to show that she had incurred Rs.8,51,000/- towards medical expenses. Ex.P26-medical bills has not been seriously disputed by the third respondent. Considering the nature of injuries sustained and the period of treatment undergone by the appellant, this Court finds that

amounts awarded under the aforesaid heads are reasonable and the same are maintained.

23. In the case on hand, the Tribunal has not awarded any amount towards loss of amenities. Loss of amenities covers the deprivation of ordinary experiences and enjoyment of life. The appellant has stated that due to injuries sustained in the accident, her left vision was totally affected. Admittedly, the appellant was working as Teacher by profession at the time of accident. Considering the nature of injuries sustained in the accident, it would be appropriate to award Rs.1,00,000/- towards loss of amenities.

24. The Tribunal has not awarded amount towards future medical expenses. Taking note of the nature of injuries sustained by the appellant, a sum of Rs.2,00,000/- is awarded towards future medical expenses.

25. The Tribunal erred in not awarding any amount towards attender charges. As stated supra, the appellant had taken treatment as inpatient from various hospitals on various spells. Considering the period of treatment undergone by the appellant and also the fact that the appellant would have been taken care of by the attender during the period of treatment, it would be appropriate to award Rs.25,000/- towards attender charges.

26. In view of the above discussion, the total compensation of Rs.10,71,000/- awarded by the Tribunal is enhanced to Rs.14,46,000/- as under:

Heads	Rs.
Disability	1,50,000.00
Medical bills	8,51,000.00
Pain and suffering	1,00,000.00
Extra-nourishment	10,000.00
Attender charges	25,000.00
Loss of amenities	1,00,000.00
Transport charges	10,000.00
Future medical expenses	2,00,000.00
Total	14,46,000.00

27. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The compensation of Rs.10,71,000/- awarded by the Tribunal is enhanced to Rs.14,46,000/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The third respondent is directed to deposit the enhanced

compensation with interest as aforesaid before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application before the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Hosur.

+1cc to Mr.D.Rameshkumar, Advocate, S.R.No.67007

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NMI(CO)

rrs 08/02/2019