

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.469 of 2018

R.Pushpa .. Appellant

-vs-

1. Talari Parvathiah

2. The New India Assurance Co.Ltd.,
No.45, 2nd Line Beach, Moore Street
Chennai 600 001
now at
Door No.232, NSC Bose Road
Bombay Mutual Building
Chennai 600 001 .. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 13.11.2017 made in M.C.O.P.No.5840 of 2015 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant :: Ms.Ramya V.Rao

For Respondents :: Mr.K.Vinoth for R2

R1 :: No appearance

JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The injured claimant, who was favoured with an award of Rs.1,78,000/-, is the appellant.

2. According to the claimant, as a result of the road accident that occurred on 16.5.2014 while she was walking from East to West towards Red Hills bus stop at Grand Northern Trunk Road, a lorry bearing Registration No.AP-21-TY-3153, which was coming on the opposite direction, driven by its driver in a rash and negligent manner, hit against her resulting in grievous injuries. As a result of the injuries suffered by her, she is unable to continue her work as a part time Sweeper and also as a vendor in dosa, idli batter. The claimant had also undergone treatment and several surgeries have been performed. Thus, the claimant sought for a compensation of Rs.50,00,000/-. The

Insurance Company resisted the claim petition contending that the accident occurred because of the negligence of the claimant while crossing the road. Besides, the age, income and employment particulars of the injured were also denied by the Insurance Company. The Tribunal, on consideration of the evidence on record including the fact that First Information Report was filed against the driver of the lorry, held that the accident occurred due to rash and negligent driving of the lorry driver and hence, the Insurance Company is liable to pay the compensation. On quantum, the Tribunal rejected the documents, namely, Exs.P4, P10, P11 & P13, which are medical bills stating that they are highly excessive. The Tribunal also concluded that the claimant had not suffered any loss of earning power because of the injuries caused. The Tribunal thus assessed the disability at 14.5%. On the said findings, the Tribunal awarded a sum of Rs.1,78,000/- as compensation. Aggrieved, the claimant is before us by way of this appeal.

3. We have heard Ms.Ramya V.Rao, learned counsel for the appellant and Mr.K.Vinoth, learned counsel for the second respondent-Insurance Company. The first respondent, namely, the owner of the lorry remained ex parte before the Tribunal and hence, notice to him in this appeal is dispensed with.

4. The discharge summaries as well as the medical bills filed by the claimant would show that she has incurred medical expenses of Rs.14,10,024/-. The Tribunal has chosen to disbelieve those medical bills on presumptions, which cannot be sustained. The Tribunal also erred in rejecting the bills relating to doctor's fees paid by the claimant which are evidenced by Ex.P10. We find that the Tribunal is not justified in commenting upon the fees charged by the doctors who perform surgeries. Once the documentary evidence is made available in support of the claim for medical expenses, the Tribunal cannot disregard the same on surmises. Of course, the Tribunal has the discretion to reject the medical bills, if the genuineness of the medical bills is disputed and it is proved that they are not genuine. In the absence of such evidence, we do not think that the Tribunal was justified in rejecting the claim based on medical bills. We are, therefore, of the considered opinion that the Tribunal ought to have granted the entire sum of Rs.14,10,024/- as evidenced by the medical bills, namely, Exs.P4, P10, P11 & P13, which are not disputed by the Insurance Company.

5. The Tribunal has also not awarded any amount towards future loss of earning capacity. The disability certificate issued by the K.K.Nagar Government Peripheral Hospital has been marked as Ex.P24 to prove that the permanent disability has been assessed at 70%. The Tribunal has arrived at the disability as 14.5%. The injuries suffered by the claimant are compound Grade II B fracture in both bones in left leg with bone loss and Grade I fracture shaft of right tibia and deformity. The Tribunal has chosen to reject Ex.P24 on the ground that it has been issued for the purpose of getting government concession. We do not agree with the said approach of the Tribunal. Once the

Government Hospital assesses the disability and issues a certificate, unless contra evidence is produced to show that the disability assessed by the said hospital is not correct, the Tribunal cannot reject the same. We, therefore, conclude that the Tribunal was not right in rejecting Ex.P24, wherein the disability has been assessed at 70%.

6. As regards loss of earning power, the same has to be decided by the Court based on the injuries and the avocation of the claimant. Admittedly, the claimant was a Sweeper employed through a contractor in Karur Vysya Bank. She has been paid a sum of Rs.6,000/- per month as salary. It is in evidence that her services have been terminated by the contractor after the accident. Ex.P18, termination certificate shows that she was employed as Sweeper in Karur Vysya Bank on contract basis on a monthly salary of Rs.6,000/-. Considering the nature of injuries suffered, namely, fracture of both bones in left leg with bone loss, we find that the claimant would not be in a position to do the same job in future. Therefore, the Tribunal erred in not awarding any amount towards future loss of income. Considering the age of the claimant as well as the deformities suffered by her and the avocation, namely, Sweeper, we fix the functional disability at 50%. From the evidence of the claimant, it is seen that apart from working as part-time Sweeper, she was also doing small time business in vending dosa and idly batter. She should have earned at least some amount from that business which will not be less than Rs.50/- per day. We, therefore, take her monthly income at Rs.7,500/-. Adding 40% towards future prospects, the monthly income for the purposes of calculating the loss of earning works out to Rs.10,500/-. We have already assessed the functional disability at 50%. Thus, the loss of earning power would be Rs.9,45,000/-. The Tribunal has awarded Rs.12,000/- towards loss of income during treatment period. The same is confirmed. The Tribunal has awarded only Rs.43,500/- towards permanent disability. The same is enhanced to Rs.2,10,000/-, since we have held that the permanent disability was to the tune of 70%. The Tribunal has awarded Rs.1,00,000/- towards medical bills and the same is enhanced to Rs.14,10,024/- based on medical bills marked as Exs.P4, P10, P11 & P13. The Tribunal has awarded Rs.5,000/- towards transportation and the same is enhanced to Rs.21,721/- based on bills marked as Ex.P9. The Tribunal has awarded Rs.5,000/- towards extra nourishment, Rs.10,000/- towards pain and suffering and Rs.2,000/- towards attender charges. Considering the nature of injuries and the period of treatment, we find that all these awards are on the lower side. Therefore, we award a sum of Rs.30,000/- towards extra nourishment, Rs.1,00,000/- towards pain and suffering and Rs.30,000/- towards attender charges. The Tribunal has not awarded any amount towards loss of amenities. The claimant is a lady aged about 36 years. The accident had resulted in very heavy disfigurement of both legs. Therefore, we award Rs.1,00,000/- towards loss of amenities. The nature of injuries suffered by the claimant would definitely require future treatment, but the Tribunal has not awarded any amount towards future medical expenses. Hence, we award a sum of Rs.25,000/- towards future medical expenses. Thus, in all, the total award

works out to Rs.28,83,745/- and the same is rounded off to Rs.28,84,000/-. The award will carry interest at 7.5% per annum from the date of petition till the date of payment, instead of 9% per annum awarded by the Tribunal.

7. The second respondent-Insurance Company is directed to deposit the award amount as per the modified award to the credit of the M.C.O.P.No.5840 of 2015 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant-Claimant is permitted to withdraw the entire amount on payment of the requisite Court fee.

8. In fine, the civil miscellaneous appeal is allowed in part enhancing the award to Rs.28,84,000/-. No order as to costs in this appeal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Motor Accidents Claims Tribunal
II Judge
Court of Small Causes
Chennai

Copy to: The Section Officer
VR Section,
High Court, Madras

+2cc to Mr.Viswanatha Rao, Advocate SR.NO.68930

+1cc to Mr.Vinod Advocate SR.NO.68600

sm:25.10.2018

C.M.A.No.469 of 2018