

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No. 2275 of 2012

V. Alamelu

..Appellant/Petitioner

Versus

1. P. Edwin Singh
(Set Exparte in the Trial Court)
2. Reliance General Insurance Company Limited,
Regional Office (Legal Department)
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkm,
Chennai- 600 034. ..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree passed by the learned VI Judge, (Court of Small Causes), Chennai in M.A.C.T.O.P.No.2467 of 2010, dated 14.03.2012.

For Appellant : Ms.P.T.Salim Fathima
For Respondent No.2 : M/s.M.B.Gopalan Association
For Respondent No.1 : Set Exparte in the Trial Court

J U D G M E N T

The petitioner/appellant has filed this appeal against the Judgment and Decree passed by the learned VI Judge, (Court of Small Causes) in M.A.C.T.O.P.No.2467 of 2010, dated 14.03.2012.

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

3. The case of the petitioner is that on 11.06.2010 at about 17.00 hours, while the petitioner was proceeding as a pillion rider in Motor Cycle bearing Registration No.TN-21-AF-0601 from Pandavakkam Village to Chenglepet Town near Arignar Anna Boys Higher Secondary School, Chenglepet, the first respondent's Van bearing Registration No.TN-22-K-1972 came at

high speed in the opposite direction dashed against the two wheeler in which the petitioner was proceeding resulting in grievous injuries to her. The accident occurred only due to negligence of the first respondent's van driver. The petitioner who was aged 40 years, by doing agricultural work and also engaging herself in construction work, was earning a sum of Rs.6000 to Rs.7500/- per month. Due to the fracture of facial bone and dislocation of jaw and other multiple injuries suffered by her, the petitioner is unable to attend to her work. She has suffered permanent disability. Hence, the petitioner sought for a sum of Rs.11 lakh as compensation from the respondents, who are the owner and insurer of the vehicle.

4. On the other hand, opposing the petition by filing the counter, the second respondent/Insurance Company contends that the accident does not occur as alleged by the petitioner. The age, income and avocation of the petitioner as stated by her is denied. The accident does not occur, due to rash and negligent driving of the van driver bearing Registration No.TN-22-K-1972. No such accident has been reported to this Respondent. The place, dated and time of the accident and alleged in the petitioner is driver. The driver of the first respondent van did not possess valid driving licence and the said vehicle was plying without valid permit. The claim of the petitioner is exorbitant. Hence, the respondent sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and two doctors were examined as PW2 and PW3. She also produced documents as Ex.P1 to Ex.P7 to prove her claim. On the side of the respondent, neither oral nor documentary evidences was let in.

6. The tribunal on the basis of the available evidence on record, found that negligence of the first respondent van driver alone caused the accident and passed an award for a sum of Rs.1,71,190/- payable by the respondents to the petitioner. Being not satisfied with the quantum of award passed by the tribunal, the petitioner has come forward with the present appeal seeking to enhance the award amount.

7. The learned counsel appearing for the petitioner contends that the tribunal ought to have fixed the monthly income of the petitioner at Rs.7,500/- instead of Rs.4,500/-. The tribunal ought to have awarded higher amount under different heads. The claim of the petitioner is based on proper evidence but the tribunal failed to appreciate the same in full. Hence, the Appellant/Petitioner sought for enhancement of the quantum of award by allowing the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident does not occur due to the negligence of the first respondent van driver and as such, the second respondent/Insurance company is not liable to pay any compensation. The claim of the petitioner is exorbitant and the nature of injuries suffered by her does not cause any functional disability. It is also contended that as the award passed by the tribunal itself, is on the higher side, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

9. Heard both side and perused the materials available on record.

10. The petitioner, who deposed as PW1 clearly stated that on 11.06.2010, while she was proceeding as a pillion rider in the two wheeler bearing Registration No.TN-22-K-1972 from Pandavakkam Village to Chenglepet Town near Arignar Anna Boys Higher Secondary School, Chenglepet, the first respondent van came at high speed and dashed against the two wheeler, in which, she was proceeding causing her implied fracture injuries. The Chengalpattu Police registered FIR against the said van driver only. While deposing PW1- the petitioner Alamelu, has clearly stated about the manner of accident. The respondent has not examined either the driver of the van involved in the accident or any other person to disprove the claim of the petitioner. In such circumstances, on the basis of PW1 evidence as well as Ex.P1-First Information Report registered by the police, the tribunal has correctly finding the negligence on the 1st Respondent van driver and concluded that the driver is responsible for causing the accident.

11. The Petitioner contends that she suffered severe injury in her face, forehead, leading to fracture of facial bone and dislocation of jaw. She also stated that her nose was crushed and suffered blood clotting in the chest. P.W.1 also stated that there is dislocation of bone in both the shoulders. She suffered injury in the right half of the face, for which she took treatment in Government Hospital, Chengam, from 11.06.2010 to 21.06.2010. The same is proved by Ex.P.2-Discharge summary. She further stated that she underwent plastic surgery to correct the facial injury and also took treatment from Opthamologist. The Petitioner again took treatment as inpatient from 29.06.2010 to 01.07.2010 and again from 06.07.2011 to 08.07.2011. During that period, surgery was done. The Petitioner further stated that she suffered watering from right eye and also painful scar in her right nose. She underwent surgery in her eye and took treatment for the same from 09.08.2010 to 11.08.2010 and in spite of continuous treatment watering from her left eye is still continuing. Due to the injuries, the petitioner lost sensation

in nose and is suffering from headache, giddiness which prevents her from attending to her normal work. Thus the petitioner contends that she had suffered functional disability, which has reduced her earning capacity. In order to prove the same, the petitioner examined P.W.2 and P.W.3 doctors. According to P.W.2, he examined the eyes of the petitioner and the vision in her right eye is only 6.5 and on that basis fixed disability at 20%. Likewise, the other doctor, who deposed as P.W.3 examined the petitioner and on the basis of the injury suffered by her on the right side face, the doctor assessed disability at 25%. The disability certificate issued by them is marked as Ex.P.6 and Ex.P.7 respectively. Admittedly, the petitioner suffered partial permanent disability as evidenced by the evidence of P.W.2 and P.W.3 doctors. However, it cannot be stated that the petitioner has suffered total permanent disability which will incapacitate her from attending her normal work. As pointed out by the Tribunal, the petitioner has not lost her vision in right eye completely but she had suffered some discomfort and also reduction in right eye vision. In the discharge summary, nothing is mentioned about the petitioner undergoing surgery in respect of facial bone. As such, there is nothing in the evidence of P.W.2 and P.W.3 to establish that the petitioner will not be able to attend to her work, as a coolie in the building construction work. As such, considering the fact that the petitioner was aged 40 years and suffered grievous injuries, the Tribunal fixed the disability suffered by the petitioner at 45%, and awarded her compensation at the rate of Rs.2000/- per percentage. This according to the petitioner is not proper and the injuries suffered by the petitioner has caused her functional disability resulting in loss of earning capacity to her. Thus, the learned counsel for the petitioner pleads to apply multiplier method to compensate the petitioner. However, considering the evidence available on record and the reasoning stated by the Tribunal, the plea of the petitioner cannot be accepted as there is no evidence to show that the petitioner has suffered functional disability. However, considering the nature of injury suffered by the petitioner and the subsequent treatment undergone by her, it will be appropriate to compensate her at Rs.3,000/- per percentage instead of Rs.2,000/- as fixed by the Tribunal. Thus, the disability compensation is calculated as follows:-

$$\text{Rs.3000} \times 45\% = \text{Rs.1,35,000/-}.$$

12. The petitioner has stated that she was earning a sum of Rs.7,500/- per month; However, as there is no proof for the same, it will be appropriate to fix her monthly income at Rs.7,000/-. Considering the nature of the injuries suffered by her and the treatment undergone by her as inpatient over four different periods from 11.06.2010 to 08.06.2011, she would not

have attended to her work at least for six months. Hence, the loss of earning during the treatment period is calculated as Rs.7000 x 6 = Rs.42,000.00. Having suffered injury in her eyes as well as her nose, it will be appropriate to award an amount for disfigurement and loss of amenities at Rs.20,000/- and Rs.25,000/- respectively. Considering the nature of injury as well as subsequent period of treatment undergone, it will be appropriate to modify the award passed by the Tribunal as stated earlier. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount awarded by the Tribunal (Rs)	Amount enhanced awarded by this Court (Rs)
1	Loss of earning Income	13500.00	42,000.00
2	Medical Expenses	21690.00	25,000.00
3	Pain and Sufferings	30,000.00	50,000.00
4	Transport to Hospital	10,000.00	20,000.00
5	Attender Charges	---	20,000.00
6	Extra Nourishment	5,000.00	20,000.00
7	Damage to clothes	1,000.00	1,000.00
8	Disfigurement	---	20,000.00
8	Loss of amenities	---	25,000.00
9	Permanent Disability	90,000.00	1,35,000.00
	Total	1,71,190.00	3,58,000.00

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

- (i) The award of the Tribunal is modified and enhanced from Rs.1,71,190.00/- to Rs.3,58,000.00/-.
- (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.
- (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 order.
- (iv) On such deposit, the injured 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) In view of the order of this Court dated 20.11.2015 interest is waived off for 36 days default period. No costs.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

msm

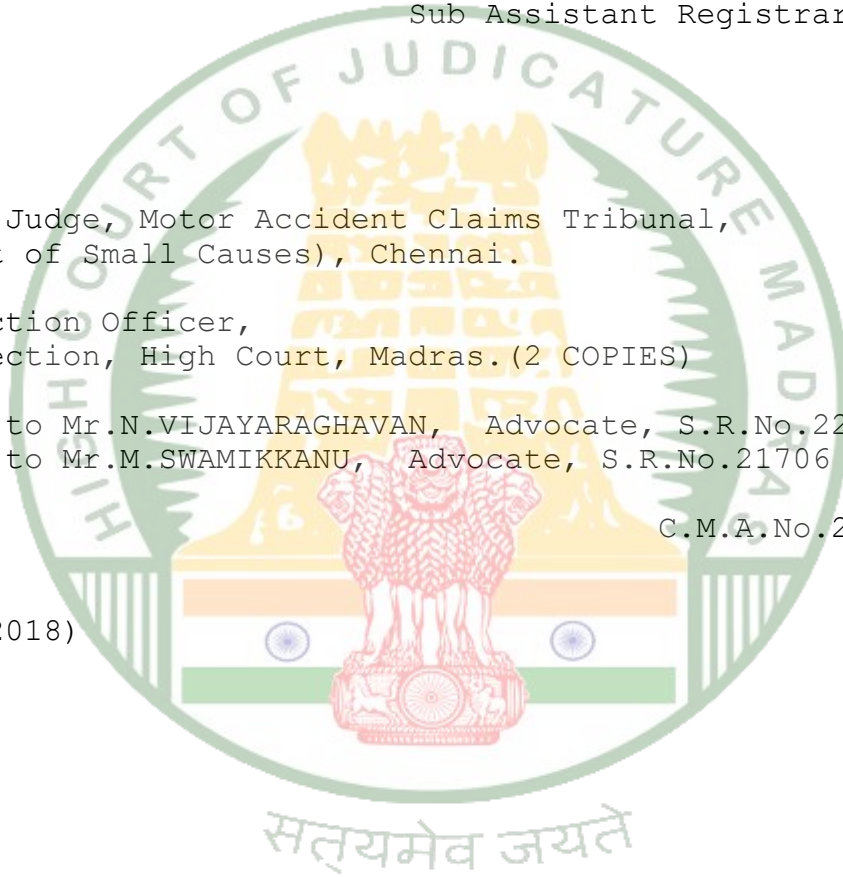
To

1. The VI Judge, Motor Accident Claims Tribunal,
(Court of Small Causes), Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.(2 COPIES)

+1cc to Mr.N.VIJAYARAGHAVAN, Advocate, S.R.No.22959
+1cc to Mr.M.SWAMIKKANU, Advocate, S.R.No.21706

C.M.A.No.2275 of 2012

EV(CO)
TR(23/07/2018)



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