

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3241 of 2008

Velu Devi

... Appellant

...VS...

1.S.Kannan

2.Iffco Tokiyo General Insurance Co. Ltd.,
Coimbatore.

... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.02.2008 made in MCOP.No.179 of 2007 on the file of the Motor Accident Claims Tribunal, Thiruvavur.

For Appellants : Mr.R.Gowthaman

For Respondents : Mr.N.Vijayaraghavan for R-2
R1 Exparte before tribunal

JUDGMENT

This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 29.02.2008 made in MCOP.No.179 of 2007 on the file of the Motor Accident Claims Tribunal, Thiruvavur.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 18.10.2006 at about 20.00 hours, when the petitioner was riding her motor cycle bearing Registration No.TN-59-S-2981 in the main road at Vonpathu Pulli Village, a Mini Door Auto bearing registration No.TN-51-U-8623, came at high speed, driven in a rash and negligent manner and dashed against the petitioner causing grievous injuries to her. The petitioner was working as Sub Inspector of Police at Peralam Police Station, getting a monthly salary of Rs.10,956/-. Due to grievous injuries suffered by her, the petitioner is unable to attend to her regular work and official duty. The accident occurred only due to the negligence on the part of the driver of the mini door auto. Hence, the petitioner seeks a sum of Rs.12,00,000/- as compensation for the disability suffered by her from the respondents, who are the

owner and insurer of the offending vehicle.

4. The respondents remained exparte and did not come forward to contest the claim petition.

5. Before the Tribunal, the petitioner examined herself as P.W.1 and Medical expert was examined as P.W.2 and produced Ex.P1 to Ex.P13 documents to prove her claim. Since the respondents remained exparte no evidence was produced before the Tribunal on the side of the respondents.

6. After considering the available evidence on record, the Tribunal found that the negligence of the first respondent mini door auto driver alone is the cause for the accident and awarded a sum of Rs.2,67,500/- as compensation to the petitioner. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard both side counsel and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contended that the Tribunal assessed the disability at 50% instead of 58% as assessed by P.W.2 Doctor. The Tribunal also failed to consider the medical bills submitted by the petitioner correctly. The loss of earning power and the disability suffered by the petitioner was not considered by the Tribunal. The disability suffered by the petitioner was not taken in to consideration by the Tribunal and the fact that till now she is taking treatment for her right knee was also not considered by the Tribunal. The amount awarded under the different heads is on the lower side and as such the petitioner seeks enhancement of the award amount by entertaining the appeal.

9. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company contends that the Tribunal has considered the materials available on record and as the respondents failed to appear and put forward their claim on the basis of available materials, the Tribunal has arrived at conclusion and the amount awarded by the Tribunal is on the higher side and the same is bound to be reduced. Hence, he seeks dismissal of the appeal.

10. The petitioner who is working as Sub Inspector of Police in Tamil Nadu police, examined herself as P.W.1 and stated that on 18.10.2006 at 8.00 p.m., while she was going in her two wheeler near Vonpathu Pulli Village, the Mini Door Auto came at high speed and dashed against her. The petitioner also produced Ex.P1, the copy of first information report, wherein, the driver

of the first respondent vehicle is shown as the accused. Further, it is evident from Ex.P3 and Ex.P4 Motor Vehicle Inspector's report that there was no mechanical defect in the vehicles involved in the accident. The petitioner also stated that the Mini Door Auto driver admitted his guilt and paid fine amount in the criminal case filed against him and the same is evidenced by Ex.P5 copy of the Judgment. It is evident from the above said documents as well as the oral evidence of P.W.1 that the negligent driving of the Mini Door Auto driver alone caused the accident. As stated earlier, the respondents remained exparte and not come forward to contradict the evidence of P.W.1 about the manner of the accident. As such, the finding of the Tribunal that the negligence of the first respondent vehicle driver alone caused the accident is just and proper and the same is confirmed.

11. The petitioner stated that he suffered fracture and also muscels stain in her legs and also under went surgery in her right thigh and joint bones. She further stated that her right leg is two c.m., short and she is unable to walk freely due to mall union of fractured bones. The petitioner examined P.W.2 Doctor, who deposed in detail about the fracture suffered by the petitioner and also about various injuries resulting in permanent disability to the petitioner. P.W.2 assessed the permanent disability of the petitioner at 58% and the certificate issued by him is produced as Ex.P12. The petitioner also produced X-rays as Ex.P11 and Ex.P13. The petitioner also produced Ex.P7 discharge summary which clearly mentioned about the number of injuries suffered and the treatment under gone by the petitioner. It is evident that the petitioner took treatment as inpatient from 19.10.2006 to 08.11.2006. Again, the petitioner was admitted in the hospital on 16.07.2006 and took treatment till 26.12.2006. The petitioner underwent surgical treatment in her right leg and she was under continuous treatment till 05.04.2007. According to P.W.2 the medical expert evidence, the petitioner suffered 50% permanent disability.

12. Even though, the second respondent disputed the claim of the petitioner about the injuries suffered and permanent disability, it is clearly established by the evidence of P.W.2 as well as the documents produced by the petitioner that due to the fracture suffered and various grievous injuries, the petitioner has suffered permanent disability of 50%. The Tribunal has accepted the same and this court find no valid reason to disagree with the same. As such the disability suffered by the petitioner is fixed at 50%.

13. The petitioner was working as Sub Inspector of Police and as evidenced by Ex.P6 Salary Certificate, she was getting a salary of Rs.10,956/- per month. However, the deduction was not shown in the said document. It is evident from the available documents that the petitioner was medical leave for nearly three months as she was unable to attend the work. However, it is admitted by the petitioner that now she is working as Sub Inspector of Police. In such circumstances, in view of 50% disability suffered by the petitioner, it would appropriate to give Rs.3000/- per percentage of the disability. Hence, the disability compensation is calculated as follows:- Rs.3000/- x 50% = 1,50,000/-. Considering the period of treatment undergone by the petitioner, loss of income during treatment period is fixed as Rs.10,956/- x 3 = Rs.32,868/-. Considering the fracture and various injuries suffered by the petitioner, a sum of Rs.50,000/- is awarded for pain and suffering, a sum of Rs.50,000/- is awarded for loss of amenities, a sum of Rs.30,000/- is awarded for extra-nourishment, a sum of Rs.30,000/- is awarded for Transportation charges and a sum of Rs.30,000/- is awarded for attender charges. A sum of Rs.1,65,000/- is awarded for medical bills. Even though the petitioner claim compensation for loss of income suffered by her, admittedly the petitioner is still working in the same cadre of Sub Inspector of Police and there is nothing on record to show that she was not given increment or suffered any other loss in her monthly income. Similarly, there is no evidence to show that she was continuously taking treatment without any salary. Hence, the claim of the petitioner for compensation towards loss of future prospectus and income is unsustainable. Likewise the petitioner has not produced any documentary proof or medical opinion to show that she is in need of future medical treatment. Hence, the claim of the petitioner for future medical treatment cannot be entertained. Accordingly, the following amount is awarded as compensation:-

Permanent Disability	Rs.1,50,000.00
Loss of income during treatment	Rs. 32,868.00
Medical Expenses	Rs.1,65,000.00
Pain and suffering	Rs. 50,000.00
Loss of amenities	Rs. 50,000.00
Attender charges	Rs. 30,000.00
Extra-nourishment	Rs. 30,000.00
Transportation Charges	Rs. 30,000.00

Total

Rs.5,37,868.00

14. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire enhanced award amount of Rs. 5,37,868/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposits, the petitioner/claimant is permitted to withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Motor Accident Claims Tribunal
Thiruvavur.

2. The Record Keeper, V.R. Section,
High Court, Madras. (2 copies)

+1cc to Mr.N.VIJAYA RAGHAVAN Advocate, S.R.No. 10443

+1cc to Mr.R.GOWTAMAN, Advocate, S.R.No. 9668

C.M.A.No.3241 of 2008

NRI (CO)
TR(26/03/2018)

सत्यमेव जयते

WEB COPY