

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3511 of 2013
and M.P.No.1 of 2013 &
C.M.P.No.13833 of 2017

New India Assurance,
Rep. by Manager,
Near Abirami Theater,
Mettur Road,
Erode.

...Appellant/2nd Defendant

Versus

1. Hilda Jaya Mary

...1st Respondent/Petitioner

2. B. Nagarajan

...2nd Respondents/
Ist Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.448 of 2011 on 03.01.2013 on the file of the learned Motor Accident Claims Tribunal (IV Additional District-Judge) of Bhavani, Erode District.

For Appellant : Mr. J.Chandran

For Respondents : Mr. C.Kulanthaivel [for R1]
[R2 died]

J U D G M E N T

The appellant/Insurance Company has come forward with this appeal against the judgment and decree passed in M.C.O.P.No.448 of 2011 on 03.01.2013 on the file of the learned Motor Accident Claims Tribunal (IV Additional District-Judge), Bhavani, Erode District.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The petitioner/claimant states that on 15.08.2011 at about 8.p.m. while she was walking in the Kollampalayam Housing unit road, Erode, the vehicle bearing Registration No.TN-33-AM-7432 owned by the 1st respondent and insured with the 2nd respondent, driven in a rash and negligent manner, came from behind and dashed against the

petitioner, causing grievous injuries. The petitioner underwent treatment as inpatient for one month in the Lotus Hospital at Erode. The petitioner stated that at the time of the accident, she was aged about 39 years and was employed as a teacher and her monthly earning was Rs.10,000/-. It is further stated that subsequent to the accident due to the injuries suffered by her, she is not able to walk or sit properly. The Petitioner claimed compensation of Rs.5,00,000/- from the owner and the insurer of the offending vehicle namely the respondents 1 and 2 herein.

3. On the other hand, opposing the claim of the petitioner, the 2nd respondent/Insurance Company contends that the driver of offending vehicle was not having any valid driving licence and due to the said violation of the policy condition, the 2nd respondent is not liable to pay any compensation. It is further contended by the 2nd respondent/Insurance Company that the accident occurred only due to the negligence of the 1st respondent/vehicle driver is not established by the petitioner herein. Hence, the respondent seeks dismissal of the petition.

4. Before the trial Court, the petitioner examined herself as P.W.1 and the medical witness as P.W.2 and produced Exs.P.1 to P.14 to prove her claim. The respondent examined R.W.1 and R.W.2 and produced Exs.R1 to R.3 to substantiate their objection to the claim in the petition. The fact of the 1st respondent vehicle was involved in the alleged accident which took place on 15.08.2011, is not disputed. The petitioner who deposed as P.W.1 stated that while she was walking along the left side of the road, the Maruthi Omni Van bearing Registration No.TN-33-AM-7432 came at high speed driven in a rash and negligent manner by its driver, came from behind and dashed against her, causing grievous injuries. The above oral evidence is supported by documents marked on the side of the Petitioner viz., Ex.P.5-wound certificate, Ex.P.7-discharge summary. Further the contention of the Petitioner that the 1st respondent vehicle driver alone is responsible for the accident is also substantiated by Ex.P1-FIR, wherein the said driver is named as an accused. Further, after investigation, Ex.P.6-Charge sheet, was also filed against the 1st respondent vehicle driver alone. The fact of accident taking place on the left side of the road is clear from Ex.P.3-Rough Sketch, and Ex.P.2- Observation Mahazar. It is also evident from Ex.P.4-Motor vehicle Inspector report that mechanical defect is not the reason for the accident. In such circumstances, considering Exs.P.1 to P.6 as well as the oral evidence of the P.W.1, it is apparent that the negligence of the 1st respondent vehicle driver alone caused the accident and therefore, the finding of the Tribunal in this regard is considered to be just and proper.

5. The petitioner states that she sustained permanent

disability at 40% and due to the injury suffered by her, she is not able to work as she used to prior to the accident. However, the tribunal found that the petitioner has not produced any material to prove her claim that she was working as teacher and was earning monthly sum of Rs.10,000/-. On that ground, the tribunal fixed the monthly income of the petitioner at Rs.4,500/-. Further, the tribunal also fixed the age of the petitioner as 39 and awarded a total sum of Rs.3,97,600/- as compensation.

6. Aggrieved over the said finding of the tribunal, the 2nd respondent/Insurance Company has come forward with the appeal contending that the accident occurred only due to negligence of the petitioner and as such she is not entitled for any compensation. It is also contended by the 2nd respondent/Insurance Company that tribunal failed to consider the fact that the 1st respondent vehicle driver was not having valid driving licence to drive the commercial vehicle. The tribunal also failed to consider Exs.R.2, R.3 and R.4 properly and finally arrived at the conclusion that the vehicle involved in the occurrence was a commercial vehicle. It is further contended that the quantum arrived at by the tribunal is on higher side. Hence, the 2nd respondent/Insurance Company seeks to entertain the appeal and to set aside the impugned order of the tribunal.

7. On a perusal of the Award, it is seen that the tribunal fixed the monthly income of the petitioner at Rs.4,500/- and arrived at the loss of income due to permanent disability at 40% as Rs.3,45,000/- and the same is challenged by the 2nd respondent/Insurance Company contending that the petitioner would not earn so much of income. Further, the petitioner has not produced any proof of avocation and income. In such circumstances, it would be appropriate to fix Rs.3000/- per percentage of disability and calculate the loss of earning as follows:-

$$40\% \times \text{Rs.}3000/- = \text{Rs.}1,20,000/-$$

8. Taking into consideration the facts and circumstances of the case, the compensation granted by the Tribunal is modified as follows:-

Sl.N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Permanent disability	Rs.3,45,600.00	Rs.1,20,000.00
2	Loss of Medical Expenses	Rs. 30,000.00	Rs. 30,000.00
3	Pain and Suffering	Rs. 10,000.00	Rs. 25,000.00
4	Extra Nourishments	Rs. 10,000.00	Rs. 20,000.00
5	Transport	Rs. 2,000.00	Rs. 10,000.00

Sl.N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
6	Aminities	---	Rs. 20,000.00
7	Attender Charges	---	Rs. 5,000.00
8	Future Medical Expenses	---	Rs. 5,000.00
	Total	Rs.3,97,600.00	Rs.2,35,000.00

9. In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is partly allowed as follows:-

- (1) The award granted by the Tribunal is reduced from Rs.3,97,600/- to Rs.2,35,000/-
- (2) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (3) The Appellant/Insurance Company is directed to deposit the award amount as ordered by this court along with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.
- (4) The 1st respondent/claimant is permitted to withdraw the award amount as ordered by this court along with accrued interest.
- (5) There will be no order as to costs in this appeal.
- (6) Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
IV Additional District-Judge, Bhavani,
Erode District.

2.The Section Officer,
V.R.Section, High Court, Madras.

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C.M.A.No.3511 of 2013

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