

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3534 of 2013
and MP.No.1 of 2013

National Insurance Co.Ltd.,
State Bank Road
(Railway Station Road)
Coimbatore 641 108

..Appellant/2nd respondent

Vs

1.Vanitha ..1st respondent/Petitioner

2.Manikandan ..2nd respondent/1st respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 22.03.2013 made in M.C.O.P.No.497 of 2012 on the file of Motor Accident Claims Special Tribunal, Coimbatore.

For appellant : : Mr.S.Vadivel

For Respondents : : Mr.N.Manokaran for R1
R-2 - Set exparte before Tribunal.

J U D G M E N T

The Appellant is the Insurance company and fled the above appeal challenging the order and decree dated 22.03.2013 made in M.C.O.P.No.497 of 2012 on the file of Motor Accident Claims Tribunal, Coimbatore.

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 case of the Petitioner is that on 08.11.2010 at about 8.45 a.m., while the petitioner was travelling as a pillion rider in the two wheeler bearing Reg.No.TN-38-BA-1629, driven by the rider cum owner, 1st respondent , on their way back home, as they approached Veerapandi pirivu near Anubhavi Subramanian kovil, due to high speed, in which the vehicle was driven, the two wheeler skidded and overturned resulting in the Petitioner being thrown out and sustained severe head injury and also multiple injuries all over

the body. According to the Petitioner, the accident occurred due to rash and negligent driving of the 1st respondent herein. Hence, the Petitioner seeks a sum of Rs.15,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The said vehicle was insured with the 2nd respondent from 30.01.2010 to 29.01.2011. The Petitioner is to prove involvement of the vehicle TN 38 BA 1629 in the accident. The claim of the Petitioner about her avocation, income and nature of injury suffered is denied. The amount claimed by the Petitioner is exorbitant. The 2nd respondent seeks for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined herself as P.W.1 and medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.18 to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in.

5. The Tribunal after analyzing the evidence on record, found negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.15,64,400/- payable by the respondents jointly and severally.

6. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

7. Heard both sides and perused the records carefully.

8. The learned counsel for the 2nd respondent/Insurance company/ appellant contends that the Tribunal erred in adopting multiplier method for assessing disability compensation. The Tribunal erred in accepting the evidence of P.W.2-Plastic Surgeon who mentioned about the audio disability suffered by the Petitioner. The Tribunal erred in accepting Ex.P.12 and awarding Rs.2,00,000/- towards future medical expenses. The Petitioner took treatment as inpatient only for 15 days and thereafter has not taken any treatment. The monthly income fixed by the Tribunal is on the higher side. The disability assessed by P.W.2 /doctor as 72% is very high and the Tribunal ought not

to have accepted the same in toto. The amount awarded under medical bills is highly excessive. The Tribunal erred in applying multiplier 18 instead of 17. The 2nd respondent/Insurance company sought for setting aside the award passed by the Tribunal by allowing the appeal.

9. Per contra, the learned counsel for the Petitioner/claimant contends that the Petitioner having suffered multiple fracture and injuries is unable to carry on her normal avocation as a beautician and she suffered loss of income. She was earning Rs.15,000/- per month from doing beautician work and was getting Rs.4000/- per person during marriage and similar functions. Due to the injury suffered, she is unable to carry on her profession of beautician. The award passed by the Tribunal is just and appropriate. Thus the Petitioner/claimant sought for dismissal of the appeal.

10. This is only quantum appeal. Both sides have not seriously disputed the conclusion of the Tribunal regarding the negligence aspect.

11. The Petitioner/claimant who is the wife of the 1st respondent deposed as P.W.1 and clearly stated about the accident occurred on 08.11.2010. The Police also registered Ex.P.1-FIR against the 1st respondent only. It is clear from P.W.1 evidence and contents of Ex.P.1-FIR that the negligence of the 1st respondent alone caused the accident. On the side of the 2nd respondent, neither oral nor documentary evidence was let in to contradict the version of the accident given by P.W.1. Thus the Tribunal has rightly concluded that the negligence of the 1st respondent alone caused the accident.

12. The Petitioner claims that she was aged 29 years and suffered severe severe head injury, right side of her face is deformed and suffered multiple injuries all over the body. It is clear from Ex.P.3-Wound Certificate as well as Ex.P.10-Transfer certificate that the petitioner was aged 29 years.

13. The petitioner produced her educational qualification certificates as Ex.P.8 and Ex.P.9, but not produced any documentary proof regarding her avocation and income. As such, considering the fact that the Petitioner worked as a beautician and the accident occurred during 2010, it will be appropriate to

fix the monthly income of the petitioner at Rs.6500/- instead of Rs.7500/- fixed by the Tribunal.

14. The Petitioner has suffered multiple injuries as stated earlier. To prove the same, she produced Ex.P.3-Wound Certificate. To prove the fact of getting treated as inpatient from 08.11.2010 to 22.11.2010, the petitioner produced Ex.P.4 copy of discharge summary.

15. To prove the nature of injury and the disability suffered by the Petitioner, P.W.2/doctor was examined. According to P.W.2, by physically examining the petitioner and also verifying Ex.P.18-Scan report and other medical documents, he fixed the disability suffered by the Petitioner at 72%. There is no contra evidence to the same. As such, the Petitioner counsel relying upon the Rulings reported in (i) 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] and (ii) 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,] and contended that the disability fixed by P.W.2 is to be accepted in full. The said contention is to be accepted. In view of the above said Ruling, the disability suffered by the petitioner is taken as 72% on the basis of P.W.2 evidence.

16. The learned counsel for the appellant/2nd respondent-Insurance company pointed out that the said assessment of disability is not correct and the petitioner has not suffered any functional disability. As such, it is contended that there is no need to adopt multiplier method to compensate the Petitioner. Therefore, considering the nature of injury suffered by the Petitioner, this court is of the view that it will be appropriate to compensate the petitioner for the disability suffered by her by applying percentage method. In the absence of any evidence to show that the petitioner suffered functional disability, it is not necessary to apply multiplier method. Therefore, by applying percentage method, the petitioner can be compensated at the rate of Rs.3000/- per percentage. Hence, the disability compensation is as under:-

$3000 \times 72\% = 2,16,000/-$.

17. Further, in view of the nature of injury and period of treatment, the Petitioner could not have attended to her avocation atleast for 4 months after the accident. Therefore, for loss of income during treatment period is Rs.6500 x 4 months=Rs.26,000/- is awarded.

18. Considering the nature of injury and the consequential suffering, it is apparent that the petitioner would have undergone pain and suffering. Hence, it will be appropriate to award Rs.50,000/- towards "Pain and suffering".

19. Taking into consideration the fact that due to injury and treatment, she would have needed an assistance of an attender atleast for 3 months, it will be appropriate to award Rs.5000/- per month towards Attender charges. As such, Rs.5000/- x 3 months = Rs.15,000/- is awarded under the head "Attender Charges".

20. Taking note of the claim of the Petitioner towards future medical expenses and that she produced Ex.P.12-Estimate in support of that, but, also considering the fact that the author of the said document was not examined, it will be appropriate to provide Rs.50,000/- towards Future Medical expenses, instead of Rs.2,00,000/- given by the Tribunal.

21. As far as other amounts granted as compensation by the Tribunal under the heads "Transport to Hospital", "Extra Nourishment" and "Medical Bills" are found to be just and proper and hence, the same are confirmed.

22. The Petitioner has produced Ex.P.2-Photo to show about her disfigurement which affects her future prospects and matrimonial life. Considering the nature of injury suffered and on the basis of Ex.P.2-Photo, it will be appropriate to provide Rs.25,000/- towards "loss of amenities". The modified compensation award granted by this court is as under:-

Sl.No.	Heads	Amounts Awarded by the Tribunal (Rs.)	Amounts awarded by this Court (Rs.)
1.	Partial permanent disability	11,66,400/-	2,16,000/-
2.	Transport to hospital	5,000/-	5,000/-
3.	Extra Nourishment	5,000/-	5,000/-
4.	Pain and suffering	20,000/-	50,000/-

5.	Medical bills	1,68,000	1,68,000/-
6.	Future medical expenses	2,00,000	50,000/-
7.	Attender charges	--	15,000/-
8.	Loss of income during treatment period	--	26,000/-
9.	Loss of amenities	--	25,000/-
	Total	15,64,400/-	5,60,000/-

23. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The claimant/1st respondent herein is entitled to award amount of Rs.5,60,000/- (Rupees Five lakhs sixty thousand only] which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) This court by order dated 13.12.2013 directed the appellant/Insurance Company to deposit 50% of the award amount along with accrued interest to the credit of MCOP.No.497 of 2012. Further, this court also permitted the claimant to withdraw 50% of the deposited amount on due application. Hence, after satisfying the award modified by this court, the Appellant/Insurance company is entitled for refund of excess amount, lying in deposit.

(iv) The claimant is entitled to withdraw the modified award amount along with accrued interest, less the amount, if any already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Special Subordinate Judge,
The Motor Accidents Claims Special Tribunal,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.47739

+1cc to Mr.S.Vadivel, Advocate Sr.47268

C.M.A.No.3534 of 2013

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srg 11/08/2018



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