

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3738 of 2012

V.Amudha ..Appellant/Petitioner

Vs

1.E.Balu

2.The United India Insurance Co.Ltd.,
No.238, New Military Road
Avadi, Chennai ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 06.08.2012 made in M.C.O.P.No.212 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Judge-II, Poonamallee.

For appellant : : Mr.J.Mahalingam

For Respondents : : Mrs.R.SreeVidhya for R2.

J U D G M E N T

The Appellant is the Petitioner/Claimant and fled the above appeal challenging the order and decree dated 06.08.2012 made in M.C.O.P.No.212 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Judge-II, Poonamallee.

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 averments in the claim petition filed by the Petitioner-V.Amudha is that on 14.12.2007 at about 10.00 a.m., as the Petitioner was travelling in a Motor cycle bearing Reg.No.TN-20-AP-1458 as pillion rider in Poonamallee High Road, Chennai, the lorry bearing Reg.No.TN-33-L-2199 came at high speed, dashed on the two wheeler, causing grievous injuries to the Petitioner. The accident occurred only due to negligence of the Lorry driver. The said lorry belonged to the 1st respondent and the same was insured with the 2nd respondent. The Petitioner was aged 19 years and she was student at that time. The Petitioner suffered serious injuries

on the clavicle, severe head injury and other serious multiple injuries all over the body. Due to the injuries suffered, her future is affected. She is unable to carry on her education. Thus, the Petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioner. The claim of the Petitioner about her age and injury suffered by her is denied. The 1st respondent Lorry was proceeding at normal speed and while going near Pallikuppam, the two wheeler in which the Petitioner was travelling came in a rash and negligent manner and dashed against the culvert as a result of which, the Petitioner was thrown out and suffered injuries. The 1st respondent Lorry never met with any accident on that date, but a false case has been registered against the driver of the 1st respondent lorry. The respondents are not liable to pay any compensation.

4. Before the Tribunal, the Petitioner examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.8 to prove her claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, after analyzing the evidence on record, found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.2,23,644/- payable by the respondents jointly and severally to the Petitioner.

5. Being not satisfied with the quantum of the award, the Petitioner-Amudha has come forward with the present appeal.

6. Heard both sides.

7. The learned counsel for the appellant/Petitioner contends that the Tribunal failed to appreciate the evidence on record properly. The evidence of P.W.1 and P.W.3 about the nature of injury suffered by the Petitioner was not appreciated by the Tribunal properly. The hip movement of the Petitioner is restricted and the petitioner is not able to sit on the floor. She also suffered disfigurement. The Petitioner was totally bed ridden during the period of treatment. The Petitioner was forced to give birth to her child during 7th month of her pregnancy due to fracture suffered by her. The Petitioner's matrimonial life is affected. The amount provided for by the Tribunal under different heads is very nominal. The Petitioner sought for enhancement of the award by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the petitioner suffered injuries only due to negligence of the rider of the two

wheeler in which she travelled and therefore seeking more compensation is not appropriate. The Tribunal itself has provided for compensation at higher level. As such, there is no need for enhancement. Thus, the 2nd respondent/Insurance company sought for dismissal of the appeal.

9. This is only quantum appeal. Both sides did not challenge the conclusion arrived at by the Tribunal, fixing negligence on the 1st respondent vehicle driver as the cause for the accident.

10. The Petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The Police also registered Ex.P.1-FIR against the 1st respondent Lorry driver only. It is clear from P.W.1 oral evidence and contents of Ex.P.1-FIR that the accident occurred only because of the rash and negligent driving by the 1st respondent lorry driver. Nothing was elicited in cross examination of R.W.1 to disprove the evidence of P.W.1. No document was produced by the 2nd respondent to contradict the Petitioner's claim. The 1st respondent lorry driver has not come to court to depose about the manner of accident. As such, the conclusion of the Tribunal that the accident occurred due to negligence on the part of the 1st respondent driver is well founded on the basis of evidence available on record.

11. The Petitioner stated that she was 19 years old and suffered multiple fracture and grievous injuries. She stated that after the accident, she took treatment as inpatient in Ramachandra Hospital, Porur, from 14.12.2007 to 06.02.2008. Thereafter, she has taken treatment for one year as outpatient in the same hospital. She also stated that she suffered four fractures. As the hip bone was broken she finds difficulty in moving around. She also stated that she was 7 months pregnant at the time of the accident and due to hip fracture, she has to give birth at the 7th month itself. She also suffered injury in her head and face. According to her, she is not able to continue her education due to disability suffered by her in the accident.

12. The doctor who deposed as P.W.3 stated that the Petitioner-Amudha suffered 45% permanent disability. Thus, it is clear from the evidence of P.W.1 to P.W.3 that the Petitioner suffered partial permanent disability due to fracture suffered by her. There is no independent evidence available on record to show that the Petitioner has continued her education or otherwise. In such circumstances, the Tribunal fixed the disability at 40%. In the absence of any other evidence or document, the Tribunal is justified in fixing the disability at 40%. However considering the fracture and injury suffered and disability undergone, it will be appropriate to award Rs.3000/-

per percentage of disability instead of Rs.2000/- provided by the Tribunal. Thus, the compensation for disability is as under:-

Rs.3000/- x 40% = Rs.1,20,000/-.

13. The Petitioner produced medical bills as Ex.P.4 and Ex.P.6. The Tribunal has accepted the same and awarded Rs.1,04,644/- and also another sum of Rs.20,000/-. Considering the nature of injury and the medical treatment taken by her and the continued treatment as out patient, it will be appropriate to round off the said sum and provide Rs.1,25,000/- under the head "Medical bills".

14. The Petitioner suffered multiple injuries and she has given birth to her child during her 7th month of pregnancy itself due to the accident. Further she has undergone treatment as inpatient for length of time and as such, she would have undergone Pain and suffering. For the same, this court is inclined to award Rs.25,000/- as no amount is provided by the Tribunal under the said head.

15. It is clear from the evidence of P.W.3 as well as Petitioner herself that she suffered disfigurement and she finds difficulty in carrying out her normal work. Hence, under the head "loss of amenities", a sum of Rs.25,000/- is awarded.

16. Considering the nature of injury, this court is of the view that the Petitioner would have needed an attender during the period of hospitalisation and as such, towards "Attender charges", a sum of Rs.10,000/- is awarded.

17. Taking note of the attendant circumstances and the Petitioner has given birth to a child, definitely she deserves to get a reasonable amount towards Extra nourishment and Transportation. Accordingly, a sum of Rs.10,000/- is granted under the head "Extra Nourishment" and a sum of Rs.10,000/- is granted under the head "Transportation".

18. It is stated by the learned counsel for the appellant/Petitioner that even though the Petitioner had finished her Online Shopping Diploma course, she is unable to work and there is loss of income due to accident. Considering the nature of injury and the treatment undergone by the Petitioner and the fact that as it is stated in the claim petition that she is a student, such claim for loss of income is unsustainable.

19. In view of the foregoing discussion, the modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	80,000	1,20,000
2.	Pain and suffering		25,000
3.	Medical expenses/ Medical bills	1,04,644 20,000	1,25,000
4.	Extra Nourishment	5,000	10,000
5.	Transportation	5,000	10,000
6.	Attender charges	--	10,000
7.	Loss of amenities	--	25,000
8.	Loss of earning	9,000	
	Total	2,23,644	3,25,000

20. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The appellant/claimant is entitled to award amount of Rs.3,25,000/- (Rupees Three lakhs twenty five thousand only] which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The 2nd respondent/Insurance company is directed to deposit the award amount within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) On such deposit, the appellant/claimant V.Amudha is entitled to withdraw the same with accrued interest, by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS VIII)

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Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Additional District Judge-II,
Poonamallee.

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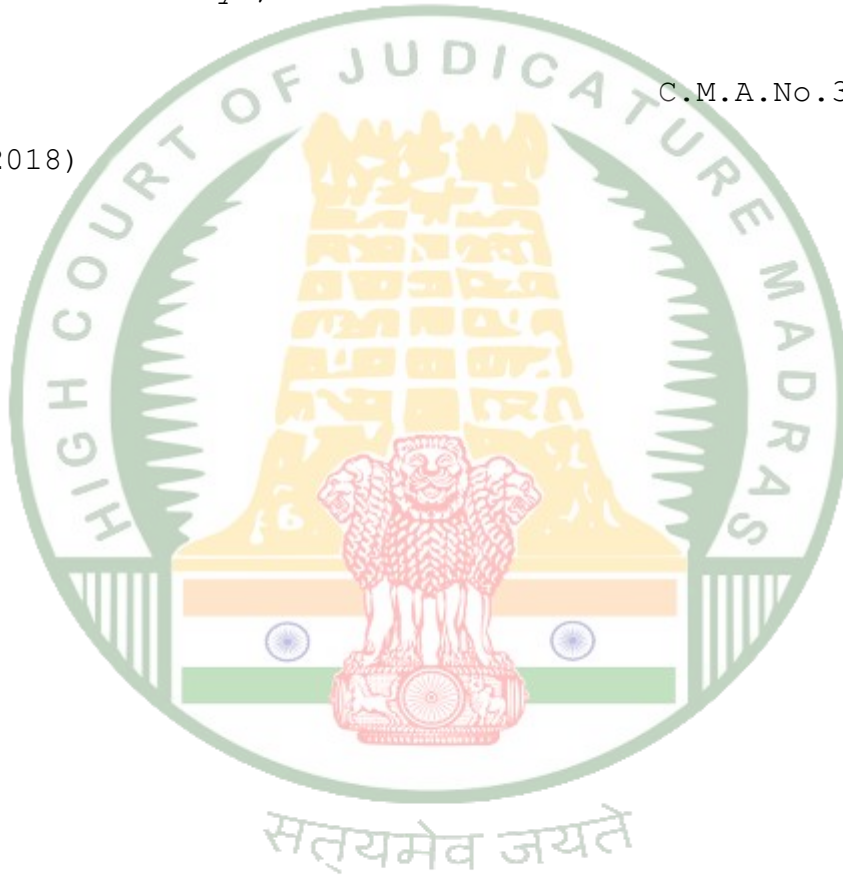
Copy TO

The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+2cc to Mr.J.Mahalingam, Advocate SR.No.46456
+1cc to Mr.R.Sreevidhya, Advocate SR.No.46306

PA(CO)
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