

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.08.2018  
Delivered on : 29.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A No.1601 of 2008

Dr.Santha Devi ...Appellant/Claimant

-Vs-

1. M.Selvam

2. The New India Assurance Co. Ltd.,  
PPK Complex, T.S.No.3548/2 & 3549/1,  
2 First Floor, south Main Street,  
Pudukottai District. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 05.11.2007 passed in M.C.O.P.No.1190 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Namakkal.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.K.Padmanabhan  
for respondent No.2

R1 - No Appearance

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.1,50,000/- awarded by the Tribunal, the appellant has filed the present appeal seeking enhancement of the compensation.

2. Brief facts are that on 21.8.2004 at about 8.40 hours, the appellant was riding her TVS Scooty bearing registration No.TN-28 D 0789 on the extreme left side of Karur-Namakkal NH 7 road and while nearing Thavuttupalayam Check Post, a car bearing registration No.TN-55 B 5679 driven by its driver in a rash and negligent manner dashed against the appellant. Due to the

impact, the appellant sustained multiple fracture and also injuries all over the body. Immediately, after the accident, she was admitted in R.K.Hospital, Namakkal, where from she was taken to Madurai Institute of Orthopedics and Traumatology, Madurai, where she had taken treatment as inpatient. Regarding the accident a criminal case in Crime No.395 of 2004 under Section 279 and 338 IPC was registered against the driver of the car. At the time of accident, the appellant was aged 41 years and was employing as Assistant Surgeon in Government Hospital, Velayuthampalayam and also a private consultancy and was earning Rs.30,000/- per month. Stating that the accident occurred due to rash and negligent driving of the driver of the car, the appellant has filed the claim petition claiming compensation of Rs.20,00,000/-.

3. Resisting the claim petition, the first respondent filed counter stating that the accident occurred due to rash and negligent riding of the appellant. At the time of accident, the car was insured with the second respondent and that the second respondent alone to pay the compensation, if any to the appellant. The first respondent also denied the age, occupation and monthly income of the appellant and also stated that the total compensation claimed by the appellant is excessive.

4. The second respondent filed counter contending that the appellant has to prove the manner of accident, injuries sustained by her and the details of treatment and also the amount spent by her towards medical expenses. It is contended that the accident took place as the appellant has entered in the place of occurrence in a rash and negligent manner without seeing the car has already entered and crossed the barricades, hit against the car and thereby invited the accident. Thus, the driver of the car is not responsible for the accident. If the Tribunal comes to the conclusion that the second respondent is liable to pay compensation, then the contributory negligence on the part of the appellant may also be taken into consideration. The appellant is not entitled to loss of earnings and the amount claimed by the appellant is excessive and thus, prayed for dismissal of the petition.

5. Before the Tribunal, the appellant examined herself as P.W.1 and Dr.Ravichandran was examined as P.W.2. Exs.P1 to P23 were marked. No oral and documentary evidence was adduced on the side of the respondents, particularly, the second respondent.

6. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the car and the second respondent, being the insurer of the offending car is liable to pay compensation to the appellant. Taking the monthly loss of

the appellant at Rs.1,000/- and adopting multiplier 15 and also taking 25% disability, the Tribunal awarded Rs.30,000/- towards disability. Adding compensation under other heads, the Tribunal awarded total compensation of Rs.1,50,000/-. Being dissatisfied with the quantum, the appellant has filed the present appeal.

7. Challenging the quantum, the learned counsel for the appellant submitted that the Tribunal has failed to note that the appellant was a practicing Assistant Surgeon and was earning Rs.30,000/- per month. He would submit that the Tribunal has fixed the loss of income at Rs.1,000/- per month and by adopting multiplier 15 has arrived the loss of income at Rs.1,80,000/- and having arrived the loss as Rs.1,000/- per month ought not to have fixed 25% out of Rs.1,000/- as loss.

8. The learned counsel further submitted that the Tribunal failed to award any amount mental agony, physical discomfort, expectation of life and the prolonged disability. He would submit that due to injuries sustained by the appellant, her earning capacity was seriously affected and the Tribunal has failed to take into consideration of the said aspect.

9. The learned counsel next submitted that in the present appeal though the appellant sought for enhancement of Rs.2,00,000/-, taking note of the over all aspects of the matter, as per the pronouncement of the Hon'ble Supreme Court, this Court has got power to award more compensation and accordingly, prayed enhancement.

10. Per contra, reiterating the findings qua the quantum of compensation awarded by the Tribunal, the learned counsel for the second respondent submitted that the total compensation of Rs.1,50,000/- awarded by the Tribunal is reasonable and there is no need to enhance the same and prayed for dismissal of the appeal.

11. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.K.Padmanabhan, learned counsel for the 2<sup>nd</sup> respondent and also perused the materials available on record. No representation on behalf of the 1<sup>st</sup> respondent.

12. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the claimant and secondly, none of those findings are under challenge. Being dissatisfied with the quantum, the appellant/claimant has preferred the present appeal.

13. According to the appellant, in the accident she had sustained severe multiple fracture injuries and also injuries all over the body. Immediately, after the accident, she was admitted in R.K. Hospital, Namakkal where first aid was given. Thereafter, the appellant was admitted in Madurai Institute of Orthopedics and Traumatology, Madurai for better treatment, where she had taken treatment as inpatient for ten days.

14. The appellant had produced Ex.P2-wound certificate, where from it is seen that in the accident, she had sustained fracture BB RL radius and ulna and fracture post column. Apart from the above fractures, the appellant had also sustained injuries all over the body. In Ex.P2-wound certificate, the Doctor who treated the appellant opined that injuries are grievous in nature. Ex.P10 is the discharge summary, where from it is seen that the appellant was admitted on 21.8.2004 and discharged on 01.9.2004. During treatment a surgery was performed on 23.8.2004.

15. In the present case, the appellant is a Doctor by profession and she had taken treatment as inpatient for nearly ten days. According to the appellant, due to injuries sustained by her in the accident, she was not in a position to work as before and further, her carrier was also affected. Though the appellant stated that she was earning Rs.30,000/- per month, she had produced Ex.P20-salary certificate, where from it is seen that at the relevant point of time, she was getting salary of Rs.10,565/- per month.

16. P.W.2-Dr.Ravichandran examined the appellant after the accident and assessed the disability at 25% and issued Ex.P23-disability certificate. In his evidence, P.W.2 deposed that while he was taking x-ray, he found insertion of plates and due injuries sustained, the appellant finding difficulty in walking, climbing stairs and squatting.

17. The Tribunal while determining the compensation towards disability, held as under:

"In any event being a doctor and also being said to be private practitioner, since she sustained fracture and normal work will affect to certain extent which will affect future income to certain extent of atleast she may loose Rs.1000/- per month, per year loss of income Rs.12,000/-."

The said approach adopted by the Tribunal is not acceptable for the reason that when the Tribunal finds that due to fracture sustained by the appellant in the accident, her future income was affected to certain extent, it ought to have taken

the monthly income of the appellant for awarding just compensation under the head loss of earning power. The appellant is said to be in continuation of profession and as such there is no 100% disablement. However, as assessed by P.W.2-Doctor, the appellant sustained 25% disablement.

18. As stated supra, the appellant being a Doctor, it would be appropriate to take her monthly income as per Ex.P20-salary certificate for determining the the amount towards loss of earning. According to Ex.P20-salary certificate, the appellant was getting salary of Rs.10,565/- per month at the relevant point of time.

19. According to the appellant, at the time of accident, she was aged 41 years. The accident occurred on 21.8.2004. However, the Tribunal held that at the time of passing award the appellant was aged 44 years and adopted multiplier 15. For the age group 41 - 45, the proper multiplier to be adopted is 14. As such, if we take the monthly income of the appellant at Rs.10,565/- and adopting multiplier 14, 100% would come to Rs.17,74,920/-. Since the appellant suffered 25% disability, 25% would fetch Rs.4,43,730/- and accordingly, Rs.4,43,730/- is awarded towards disability/loss of earning.

20. The Tribunal awarded Rs.30,000/- towards pain and suffering; Rs.5,000/- towards extra-nourishment and Rs.70,000/- towards medical bills.

21. The appellant produced Ex.P13-medical bills to show that she had incurred Rs.69,449.32 towards medical expenses. Considering Ex.P13-medical bills, Rs.70,000/- awarded by the Tribunal is reasonable and the same is confirmed. Similarly, Rs.30,000/- towards pain and suffering and Rs.5,000/- towards extra-nourishment awarded by the Tribunal are reasonable and the same are maintained.

22. The appellant claimed Rs.3,007/- towards damages of her Scooty. To show that her Scooty got damaged in the accident and incurred Rs.3,007/- for repairing the same, the appellant had produced Ex.P15-receipt. However, the Tribunal declined to grant the said amount holding that there was no proof for claim of amount from the insurance company towards damages. Since the second respondent has not produced any contra document to show that the appellant had claimed damages from them, this Court feels that it would be appropriate to award Rs.3,007/- claimed by the appellant towards damages to vehicle. Thus, the compensation of Rs.1,50,000/- awarded by the Tribunal is enhanced to Rs.5,51,737/-.

23. By relying upon the decision of the Hon'ble Supreme Court in Sanjay Verma v. Haryana Roadways, reported in (2014) 3 SCC 210, the learned counsel for appellant submitted that the Court can grant compensation beyond what was claimed in motor vehicle cases.

24. In Sanjay Verma v. Haryana Roadways, supra, the Hon'ble Supreme Court held:

"20. .... Though it is not beyond our powers to award compensation beyond what has been claimed (Nagappa v. Gurudayal Singh, (2003) 2 SCC 274, in the facts of the present case we are of the view that the grant of full compensation, as claimed in the claim petition i.e. Rs.3,00,000 under the head "future treatment", would meet the ends of justice. We, therefore, order accordingly."

25. Though in the appeal, the appellant/claimant claimed Rs.2,00,000/- enhancement, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant.

26. In Nagappa v. Gurudayal Singh and others, reported in (2003) 2 SCC 274, the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

27. In view of the above discussion, the compensation of the Rs.1,50,000/- awarded by the Tribunal is enhanced to Rs.5,51,737/-, rounded off to Rs.5,52,000/-, as under:

| Heads              | Rs.         |
|--------------------|-------------|
| Disability         | 4,43,730.00 |
| Medical expenses   | 70,000.00   |
| Pain and suffering | 30,000.00   |
| Extra-nourishment  | 5,000.00    |
| Damages to vehicle | 3,007.00    |
| Total              | 5,51,737.00 |
| Rounded off        | 5,52,000.00 |

27. In the result, the Civil Miscellaneous Appeal is allowed with proportionate costs. The compensation of Rs.1,50,000/- awarded by the Tribunal is enhanced to Rs.5,52,000/-. The second respondent is directed to deposit the enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount along with accrued interest. The appellant is directed to pay the deficit court fee and Registry is directed to draft the decree only after payment of the deficit court fee by the appellant.

vs

Sd/-

Assistant Registrar(C.O)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate,  
Namakkal.

+1cc to Mr.N.Manokaran, Advocate, S.R.No7294/19

+1cc to Mr.K.Padmanabhan, Advocate, S.R.No.6771/19

C.M.A.No.1601 of 2008

Kak (22/05/2019)

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