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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.04.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.1302 of 2011 and
M.P.No.1 of 2011

The Divisional Manager,
United India Insurance Co.Ltd.,
No.2, Dr.Sankaran Road,
Namakkal.

...Appellant/2nd Respondent

Vs.

1.Rani
2.Manoharran

... 1st Respondent/Petitioner

(2nd respondent was set exparte before
the Tribunal)

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.07.2010, in M.C.O.P.No. 287 of 2009, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Namakkal District.

For Appellant : Mr.T.Ravichandran
For Respondents : Mr.A.R.Suresh for R1
R2 - exparte before Tribunal

JUDGMENT

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 287 of 2009, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal District. They have filed the present appeal questioning both the liability to pay compensation and the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

(i) The first respondent/claimant was aged 26 years, on the date of the accident. She was working as Weaver and earning a sum of Rs.5,000/- per month.



(ii) On 19.09.2008, at about 12.30 a.m, one Balasubramanian was driving a two wheeler bearing Registration No.TN 28 M 8240 in Karavalli to Solakadu Hills road towards left side of the road and the first respondent/claimant was a pillion rider in the above vehicle. At that time, a Mini Lorry bearing Registration No. TN 28 P 9219, driven by its driver in a rash and negligent manner, came in the opposite direction without observing road traffic rules, rash and negligent manner hit against the first respondent's moped and caused the accident. Due to the accident, the first respondent/ claimant was thrown away from the bike and sustained multiple grievous injuries and compound fractures in her left rib bone fracture and some other injuries all over the body. This accident occurred only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 28 P 9219.

(iii) Immediately after the accident, the first respondent/claimant was admitted in C.M.Hospital, Namakkal for treatment, where, she took treatment for one week and it is alleged by the first respondent/claimant that, a sum of Rs.50,000/- has been spent towards medical and other expenses.

3. Before the Tribunal, the first respondent/claimant was herself examined as PW1 and the doctor who treated her was examined as PW2 and exhibits P1 to P12 were marked. On behalf of the Insurance Company, no oral or documentary evidence was marked. During the Trial, the Insurance Company has disputed the manner of the accident and they also disputed the age, avocation and alleged income of the first respondent/claimant. Based upon the oral evidence of PW1 coupled with FIR (Ex.P1), the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 28 P 9219., belonging to the second respondent herein and insured with the United India Insurance Company Limited. Therefore, the Tribunal directed the first and second respondents, therein, to jointly and severally pay a sum of Rs.2,23,782/- to the first respondent/claimant. Aggrieved against the orders passed by the Tribunal, the United India Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides.

5. On perusal of the orders passed by the Tribunal and the materials available on records, this Court finds that, the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 28 P 9219. does not warrant any



interference, at this appellate stage, and the same is hereby confirmed.

6. The learned counsel for the appellant/Insurance Company would submit that the multiplier method arrived at by the Tribunal for assessing the pecuniary loss does not warranted. Considering the age of the injuries and also the notional income of Rs.3,500/- fixed by the Tribunal for the period of accident is on the higher side.

7. Heard the learned counsel for the first respondent/claimant.

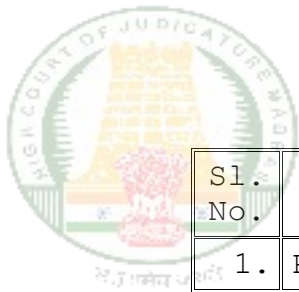
8. After going through the evidence of P.W.2-Doctor Sivalingam who has given treatment to the injured for Artho and also stated that the Rib III, IV have fractured and subsequently, after the treatment, it was malunited and the claimant has suffered from breath issues in her entire lifetime and the claimant as treated in-patient for 10 days from 20.09.2008 to 30.09.2008 as could be seen from Exhibit P3-Discharge summary.

9. Taking into consideration that P.W.2-Doctor who has given treatment to the claimant and also the fact that she has suffered 3,4 left rib bone fracture and the finding of the Tribunal in adopting the multiplier method need not be interfered with.

10. However, taking note of the date of the accident and alleged avocation, the notional income is fixed a sum of Rs.3,500/- by the Tribunal is reduced to Rs.3,000/- and the 'permanent disability' is re-assessed at Rs.1,53,000/- (Rs.3,000x12x17x25%).

11. Taking into consideration that the first respondent/claimant was treated as in-patient for 10 days and also suffered disability at 25% , the first respondent/claimant is entitled a sum of Rs.10,000/- towards 'attender's charges'. No amount is awarded by the Tribunal under the head 'loss of amenities' and therefore, a sum of Rs.10,000/- is awarded under the same. All the other heads awarded by the Tribunal are just and reasonable and the same are hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 287 of 2009 is modified as follows:



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Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent Disability	Rs.1,78,500/-	Rs.1,53,000/-
2.	Pain & Sufferings	Rs. 15,000/-	Rs. 15,000/-
3.	Nutrition	Rs. 7,500/-	Rs. 7,500/-
4.	Transportation	Rs. 7,500/-	Rs. 7,500/-
5.	Medical Bills	Rs. 15,282	Rs. 15,282
6.	Attender's charges	----	Rs. 10,000
7.	Loss of amenities	----	Rs. 10,000
	Total	Rs.2,23,782/-	Rs.2,18,282/-

The compensation awarded by the Tribunal is reduced from Rs.2,23,782/- to Rs. 2,18,282/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,23,782/- to Rs. 2,18,282/-.

(iii) The appellant - Insurance Company is directed to deposit the compensation awarded by this court, i.e., Rs.2,18,282/- together with interest at the rate of 7.5% per annum (if not already deposited) to the credit of M.C.O.P.No.287 of 2009, dated 26.07.2010, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal District within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first respondent/claimant is permitted to withdraw the same, in the suitable manner known to law.

(v) The present appellant - Insurance Company is permitted to withdraw the amount, in excess of the award passed by this Court, if any, in the suitable manner known to law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



To

1. The Motor Accidents Claims Tribunal
Chief Judicial Magistrate,
Namakkal District.

Copy to:

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

+1cc to Mr. T. Ravichandran, Advocate sr.41641
+1cc to Mr. A. R. Suresh, Advocate sr.42741

C.M.A.No.1302 of 2011 and
M.P.No.1 of 2011

rsk(co)
nr 18/11/2019