

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1288 of 2015
and M.P.No.1 of 2015
and Cros.Obj.No.84 of 2015

Reliance General Insurance Company Ltd.,
2nd Avenue, 2nd Floor, Anna Nagar,
Chennai - 40.

... Appellant in
C.M.A.No.1288/2015 & 1st Respondent
in Cros.Obj.No.84/2015
(2nd Respondent)

vs.

1.S.Chitra

...1st Respondent in C.M.A.No.1288/2015
Cross Objector in Cros.Obj.No.84/2015
(Claimant)

2.J.Senthil

...2nd Respondent in C.M.A.No.1288/2015
and Cros.Obj.No.84/2015 (1st Respondent)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, and Cross Objection filed under order 41 Rule 22 of CPC against the award and decree dated 09.12.2013 made in M.C.O.P.No.3207 of 2011 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant in C.M.A
and 1st Respondent in Cros.Obj.: Mr.S.Arun Kumar

For Respondent No.1 in
C.M.A and for Cros.Objector
in Cros.Obj.84/2015 :Mr.M.P.Senthil Kumar
for R1

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the award and decree dated 09.12.2013 on the file of Motor Accidents Claims Tribunal III Court of Small Causes in M.C.O.P.No.3207 of 2011.

For Cross Objector: Mr.M.P.Senthil Kumar

COMMON JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

Civil Miscellaneous Appeal No.1288 of 2015 has been filed by the Insurance Company and Cross Objection No.84 of 2015 has been filed by the claimant.

2.The Insurance Company has challenged the quantum of compensation awarded by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.No.3207 of 2011, while Cross Objector, who is the claimant has filed Cross Objection No.84 of 2015, seeking enhancement of compensation.

Brief facts leading to the filing of Civil Miscellaneous Appeal and the Cross Objection.

3.The claimant is the first respondent in C.M.A.No.1288 of 2015 and Cross Objector in Cros.Obj.No.84 of 2015. The claimant sustained injuries on 20.06.2011 as a result of an accident caused by a Tata 407 vehicle bearing Registration No.TN-22-AT-5865 owned by J.Senthil and insured with the Appellant in C.M.A.No.1288 of 2015.

4.On 20.06.2011 at about 2.30.p.m. while the claimant was riding a TVS Scooty Pep bearing Registration No.TN-22-AQ-0272 from Medavakkam to Tambaram Main Road, a Tata 407 vehicle bearing Registration No.TN-22-AT-5865 hit the TVS Scooty Pep from behind and ran over the claimant which resulted in the claimant sustaining grievous injuries. The claimant preferred a claim before the Motor Accidents Claims Tribunal (III Court of Small Causes, Chennai) in M.C.O.P.No.3207 of 2011, seeking a compensation Rs.1,70,45,000/- which was restricted to Rs.82,00,000/- against the respondents for the injuries sustained by her as a result of the accident.

5.The Motor Accidents Claims Tribunal by its award dated 09.12.2013 in M.C.O.P.No.3207 of 2011, directed the Appellant as well as the second respondent, who is the owner of the Tata 407 vehicle to pay the claimant a sum of Rs.46,32,000/- together with interest at the rate of 7.5% per annum (excluding Rs.1,00,000/- awarded towards future medical expenses) from the date of claim petition i.e. 03.08.2011 till the date of deposit.

6.Aggrrieved by the award dated 09.02.2013, passed in M.C.O.P.No.3207 of 2011, C.M.A.No.1288 of 2015 has been filed by the Insurance Company questioning the quantum of compensation assessed by the Tribunal while the claimant has filed

Cros.Obj.No.84 of 2015 seeking enhancement of compensation.

7.Heard Mr.S.Arun Kumar, learned counsel for the Appellant in and Mr.M.P.Senthil Kumar, learned counsel for the first respondent in C.M.A.No.1288 of 2015 as well as Cross Objector in Cros.Obj.No.84 of 2015.

8.It is the case of the Insurance Company that the compensation awarded by the Tribunal is excessive whereas, it their case of the claimant that the compensation awarded by the Tribunal is inadequate and it has to be enhanced. The Tribunal has awarded a total compensation of Rs.46,32,000/- to the claimant as detailed below:

Loss of Income	Rs.2,40,000
Transport to Hospital	Rs.15,000
Extra nourishment	Rs.75,000
Damage to clothing	Rs. 5,000
Medical Expenses	Rs.9,00,000
Future Medical Expenses	Rs.1,00,000
Attender charges	Rs.75,000
Loss of amenities to life	Rs.50,000
Pain and sufferings	Rs.1,00,000
Loss of earning capacity	Rs.30,72,000

Total compensation is fixed at Rs.46,32,000

9.The Claimant was a Senior Consultant in S2S Consultants earning monthly income of Rs.1,05,000/- at the time of the accident. The appointment order and salary certificate of the claimant was also marked as Ex.P10 to prove her monthly salary. Due to the grievous injuries sustained by her as a result of the accident, the claimant had to resign from her job and her resignation letter was marked as Ex.P13 and the employer termination letter marked as Ex.P11 before the Tribunal.

10.The resignation letter Ex.P13 given by the claimant within two months from the date of accident will clearly establish that only due to the grievous injuries sustained by her as a result of the accident, she had to resign from her employment with S2S Consultants. The claimant has also filed a copy of her B.E. (First class with distinction) degree certificate (Ex.P3) to prove her educational qualification as well as her academic excellence. On the side of the claimant, her employer's representative PW3 was also examined who has corroborated the evidence of the claimant regarding her employment details.

11.As a result of the accident, the claimant suffered right sacro-iliac joint disruption with superior and inferior rami fracture right side, left sacrum fracture disruption (open book injury) and left anterior column acetabulum undisplaced fracture and delayed traumatic perforation of small bowel. Open reduction and internal fixation at right sacro-iliac joint canulated screw fixation left side was done on 21.06.2011. Laporotomy and closure of small bowel perforation was done on 23.06.2011.

12.Ex.P1 discharge summary issued by Global Hospital discloses that the claimant was taking in patient treatment at Global Hospital from 20.06.2011 to 26.07.2011. Ex.P6 CT scan abdomen discloses that the claimant suffered from vertebral and right lumbar hernia. Ex.P7 disability certificate issued by PW2 Dr.Saichandran also confirms the same. The claimant was aged 37 years at the time of the accident and to prove her age she has filed a copy of her birth certificate Ex.P4. Considering the above factors, the Tribunal has assessed her monthly notional income at Rs.45,000/-.

13.The Tribunal has awarded a sum of Rs.2,40,000/- to the claimant towards loss of earning capacity. The Tribunal has observed that due to the injuries sustained in the accident, the claimant would have been prevented from attending her work to maximum period of six months. Considering the fact the claimant had resigned from S2S Consultants on 20.08.2011 as seen from her resignation letter Ex.P13, the assessment of the compensation by the Tribunal towards loss of earning capacity at Rs.2,40,000/- awarded for six months at the rate of Rs.40,000/- per month is a just compensation. The Tribunal has awarded Rs.15,000/- towards transportation cost, Rs.75,000/- towards extra nourishment charges, Rs.5,000/- towards damage to clothing materials, Rs.9,00,000/- towards medical expenses. The claimant has submitted medical bills total amounting to Rs.8,64,586/- as per Ex.P2 and Rs.1,00,000/- has been awarded towards future medical expenses, Rs.75,000/- has been awarded towards attender charges, Rs.50,000/- towards compensation for loss of amenities, Rs.1,00,000/- towards pain and suffering. We are of the considered view the compensation awarded by the Tribunal under various heads is a just compensation.

14.The Tribunal has also correctly analyzed Ex.P6, disability certificate as well as considered the evidence of PW2 Dr.Saichandran. Even though, the disability certificate Ex.P6 discloses that the claimant has suffered 80% disability, the Tribunal has assessed the disability only at 40% considering the fact that the disability certificate does not pertain to whole body disability. The Tribunal has applied 16 multiplier

considering the age of the claimant was 37 years at the time of the accident.

15.For the forgoing reasons, we are of the considered view that the compensation awarded towards loss of earning capacity at Rs.30,72,000/- is a correct assessment. We do not find any infirmity in the assessment of the compensation by the Tribunal under various heads and therefore, the appeal filed by the Insurance Company and the Cross Objection filed by the claimant does not deserve any merit.

16.In the result, the appeal as well as the cross objection is dismissed and the Appellant-Insurance Company is directed to deposit the entire award amount as per the award of the Tribunal along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.3207 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the claimant through RTGS within a period of four weeks thereafter. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1. The III Judge, Court of Small Causes
Motor Accidents Claims Tribunal, Chennai

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

+1 CC to Mr.S.Arun Kumar, Advocate sr 77836.

C.M.A.No.1288 of 2015
and Cros.Obj.No.84 of 2015

SV(CO)
SP(04/11/2019)