

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2285 of 2011

and

M.P.No.1 of 2011

National Insurance Company Limited,
Dr.Nanjappa Road,
United Shopping Complex,
Coimbatore District. Appellant/Respondent

.. Vs ..

1. Kalavathy
2. Jagatheeschandran Respondents/Petitioners

PRAYER:

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.09.2008 made in M.C.O.P.No.712 of 2006 on the file of the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur).

For Appellant : Mrs.N.B.Surekha

For R-1 : Mr.S.S.Swaminathan

For R-2 : No Appearance

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the Judgment and decree dated 23.09.2008 made in M.C.O.P.No.712 of 2006 on the file of the Motor Accidents Claims Tribunal (Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur).

2. The accident in this case happened on 02.06.2006 at about 17.30 hours near Pattieswaran Kovil, Perur, while the claimant was travelling in her two wheeler and in the said accident, the claimant has sustained grievous injuries. Hence, she has filed a claim before the Tribunal and the Tribunal, after considering

both oral and documentary evidence adduced on either side, awarded a sum of Rs.3,58,111/- together with interest at 7.5% and costs to the claimant.

3. Learned counsel appearing for the appellant/Insurance Company submitted that the liability has been fixed wrongly on the part of the insurance company especially when there is a considerable delay in filing the FIR and a specific stand has been taken by the appellant/Insurance Company before the Tribunal that the driver of the vehicle has been subsequently substituted for the purpose of gaining MCOP. It is submitted that the quantum assessed by the Tribunal is also on the higher side.

4. Learned counsel appearing for the first respondent/claimant would contend that the delay in filing the FIR is due to ill-health of the injured/claimant and the explanation given by the claimant has been accepted by the Tribunal and hence, prayed for dismissal of the appeal.

5. After going through the evidence on record, it appears that P.W.1/claimant has categorically stated that after the accident, she was unconscious and from the documents Exs.P.1 to P.3, it is seen that the incident has taken place on 02.06.2006 and she was admitted in the KG Hospital, Coimbatore and after the intimation sent by the KG Hospital, Coimbatore, the Inspector of Police Vellingiri went to the hospital and as the injured was sustained head injury and underwent surgery on the head and she was also not in a position to speak to the Inspector of Police, her mother has given statement. Accordingly, Ex.P.1-FIR was registered by the Inspector of Police on 07.06.2006. Taking into consideration the nature of injury sustained by the claimant and she was immediately admitted in the hospital and based upon the hospital intimation only, Ex.P.1-FIR came into an existence. The Tribunal has accepted the explanation offered by P.W.1/injured for the delay in filing the FIR which does not warrant any interference by this Court on the factual position as narrated above. Furthermore, though a claim has been made requesting a sub investigating agency, none has been placed before the Tribunal. Accordingly, the Tribunal has held that the delay in preparing the FIR cannot be doubted as the delay has been properly explained and the same has been accepted by the Tribunal and hence, the liability fixed by the Tribunal on the Insurance Company does not call for any interference at this appellate stage. The rash and negligent is already been fixed on the part of the driver of the Scooter. As to coming on the point of quantum, it appears that P.W.1/injured has stated that she was working as a Tailor and claimed a sum of Rs.5,000/- as monthly income, but the Tribunal has fixed it as Rs.4,000/-. However,

taking consideration the date of the accident and the nature of the avocation said to have been carried on by P.W.1, I am of the considered view that Rs.3,500/- could be the proper income. Accordingly, the income is reduced from Rs.4,000/- to Rs.3,500/- and taking into consideration the age of the claimant as 37 at the time of the accident, multiplier of 16 has to be adopted. P.W.2-Doctor, who had issued Ex.P.5-Permanent Disability Certificate, based upon Ex.P.6-X-ray, assessed the disability as 38%. However, the Tribunal has taken the permanent disability as 33%. Accordingly, pecuniary loss is calculated as Rs.3,500/- x 12 x 16 x 33/100 = Rs.2,21,760/-. The award of Rs.5,000/- granted by the Tribunal under the head of Pain and Sufferings is increased to Rs.10,000/-. Further, the award of Rs.5,000/- granted by the Tribunal under the head of Extra Nourishment is increased to Rs.10,000/- and the award of Rs.2,300/- granted by the Tribunal under the head of Transportation charges is increased to Rs.8,000/-. The award of Rs.200/- under the head of Damage to clothing and the award of Rs.92,171/- under the head of Transportation charges passed by the Tribunal shall stand confirmed. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of future earning capacity	Rs. 2,53,440/-	Rs.2,21,760/-
2.	Pain and Sufferings	Rs. 5,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
4.	Damage to clothing	Rs. 200/-	Rs. 200/-
5.	Transportation charges	Rs. 2,300/-	Rs. 8,000/-
6.	Medical Expenses	Rs. 92,171/-	Rs. 92,171/-
	Total	Rs. 3,58,111/-	Rs.3,42,131/-

6. In the result,

I. The Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced to Rs.3,42,131/- from Rs.3,58,111/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant-Insurance Company is directed to deposit the modified amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the first respondent/claimant is permitted to withdraw the modified award amount with proportionate interest, less the amount already withdrawn, if any.

V. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Additional District Court,
Fast Track Court No.4,
Motor Accidents Claims Tribunal,
Coimbatore at Tiruppur.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.12789

+1cc to Mrs.N.B.Surekha, Advocate, S.R.No.12740

C.M.A.No.2285 of 2011

MG (CO)
CS/24/05/2019

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