

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 11.04.2019	Date of Pronouncing Judgment 09.09.2019
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2999 of 2012

V.Sangitha

...Appellant/Petitioner

Vs.

1.T.Arokiasamy

2.The New India Assurance Co., Ltd.,

No.45, Moore Street, Chennai - 1. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Common Judgment and Decree dated 21.03.2012 in M.C.O.P.No.1964 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Gangaramprasad

For Respondent 2: Mr.S.Manohar

For Respondent 1: Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Common Judgment and Decree dated 21.03.2012 in M.C.O.P.No.1964 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

2.The claimant is the appellant seeking enhancement of compensation awarded in M.C.O.P.No.1964 of 2008. She has filed the claim petition alleging that on 24.06.2007 at about 05.45 hours, Mrs.Sangita, the petitioner in all the three OP's, her husband S.Venkatasubramaniam (alias) Ramesh deceased in M.C.O.P.No.1963 of 2008 and her son V.Vishnu, deceased in M.C.O.P.No.1965 of 2008 were travelling in Tata Sumo bearing Registration No. TN 31 U 8444 along with other co passengers from Chennai to Coimbatore (via) Sankagiri, Salem District. Whiles, the driver of the Tata sumo, drove the vehicle in a rash and negligent manner and dashed against a private bus bearing Registration No. TN 30 G 8888 which was coming in the opposite direction on the said road and after the impact, the Tata Sumo stopped at the southern side of the road and in the

accident one Mr.S.Venkatasubramaniam, the husband of the petitioner sustained grievous injuries and died on the spot, one V.Vishnu, the son of the petitioner sustained grievous injuries and died on the way to the hospital and the petitioner sustained grievous injuries besides the death of the driver of the Tata sumo, father in law and mother in law of the petitioner and grievous injuries to other co passengers. The first respondent is the owner of the Tata Sumo and the second respondent is the insurer and both are vicariously and statutorily liable to pay compensation to the petitioner.

3.Before the Tribunal the claimant examined herself as P.W.1 and the Doctor was examined as P.W.2 and marked Exs.P1 to P23. As the husband of the claim petitioner herein and the son of the claim petitioner died on the spot, all the 3 MCOPs were taken together and disposed of by way of common Judgment. The other CMAs filed against the other MCOPs have reported to be already disposed of and the claimant was awarded a sum of Rs.3,08,800/- in this M.C.O.P.

4.The factum of the accident, manner of the accident and the finding of the Tribunal that rash and negligence is on the part of the driver of the first respondent's vehicle which was insured with the second respondent's vehicle are not disputed and hence,the same are hereby confirmed.

5.P.W.1 / claim petitioner deposed before the Tribunal that she was first admitted in Lotus Hospital, Erode as an inpatient from 24.06.2007 to 30.06.2007 and during treatment, her spleen was removed, liver was sutured and conservative treatment was given to fracture of bones. Thereafter, she was admitted at Sundaram Medical Foundation, Anna Nagar, Chennai as an inpatient from 30.06.2007 to 16.07.2007 and surgery was performed on her right hand, (ORIF) internal fixation was done and after discharge, she took treatment as an out patient in the same hospital. The injuries sustained by P.W.1 are mentioned in Ex.P7 and Ex.P8 discharge summary.

6.It is seen from the evidence of P.W.1 that she took treatment in Vijaya hospital Chennai on three occasions i.e., 27.08.2007, 28.08.2007 and 06.09.2007 for liver lacerations and spleen avulsion and she is still undergoing treatment periodically. The treatment taken by the petitioner as out patient is mentioned in Ex.9 series O.P. She is unable to use her right hand due to movement restriction and unable to lift and carry heavy objects due to fracture of pelvis and she is finding it difficult to stand for long duration, walk long distance and still experiencing pain while breathing and on account of removal of spleen, her immunity level was considerably been reduced. In support of the said contention learned counsel for the appellant / claimant has relied on a

Judgment of a Division Bench of this Court in C.M.A.No.2825 of 2015 dated 10.03.2016 Reliance General Insurance Company Limited -vs- M.Srinivasan and another.

7.P.W.2 Doctor deposed that P.W.1 has sustained grievous injury in her stomach, due to which, spleen was removed and liver was sutured and due to the above injuries, P.W.1 is suffering stomach pain, indigestion and lungs infection, for which, he has assessed 40% disability. P.W.2 has further stated that there is mal union of right ribs 6 and 7, pain on respiration and difficulty to do hard work and for that, he has assessed 10% disability. Further deposed that P.W.1 has sustained fracture of ulna and fixation of plate is still there and there is mal union of Ulna, due to which, she is suffering 40% movement restriction in right wrist and 10% disability is assessed by P.W.2 for this. P.W.1 has also sustained fracture of bones in right hip and due to mal union of fractured bones, P.W.1 finds it difficult in continuous walking and sitting and 25% disability is assessed by P.W.2. It is seen from the evidence of P.W.2 that the disability caused to P.W.1 is partial permanent disablement and its percentage is 85% in total.

8.On consideration of the both oral and documentary evidence as referred above, it is seen that the claim petitioner has suffered Polytrauma - Splenic avulsion / laceration liver, Fracture ribs of right side, Fracture pelvis on the right side, Fracture ulna on the right wrist and bruises and lacerations all over the body and the Doctor has assessed the Partial Permanent Disability at 85% in the aforesaid manner and issued disability certificate Ex.P8. On consideration of the nature of the injuries sustained and also the fact that the claim petitioner / appellant is taking home tuition, the nature of the injuries as resulted in functional disability to the claim petitioner and by adopting the principle of assessment of disability to the whole body with regard to the avocation, it is reassessed as 30%.

9.As per Ex.P16 xerox copy of driving license, the date of birth of the appellant / claim petitioner is mentioned as 04.07.1977 and accordingly the age of the appellant / claimant on the date of the accident is fixed as 30 years and following the decision in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)] multiplier of 17 is adopted. Taking into consideration the evidence of P.W.1 the Notional Income is fixed at Rs.3000/- per month and following the decision reported in 2017(2) Tamil Nadu Motor Accident Cases 39 National Insurance Co. Ltd., -vs- Pranay Sethi and others, she is entitled for 30% towards Future Prospectus. Accordingly, the compensation towards pecuniary loss sustained by the appellant / claimant is re-assessed at Rs.3000/- + Rs.900/- = Rs.3900/- and Rs.3900/- x 12 x 17 x

30/100 = Rs.2,38,680/- . A Division Bench of this Court, in a similarly placed case for removal of spleen and fracture in right thigh and right hand, in C.M.A.No.2825 of 2015 dated 10.03.2016, has awarded a sum of Rs.1,00,000/- towards Pain and Sufferings and also awarded a sum of Rs.1,00,000/- towards Loss of Amenities. Hence, this Court awards a sum of Rs.1,00,000/- towards Pain and Sufferings, a sum of Rs.1,00,000/- towards Loss of Amenities and Rs.20,000/- for Transportation and a sum of Rs.25,000/- towards Nutrition and Extra Nourishment, a sum of Rs.48,899/- towards Medical Expenses as per Ex.P11, a sum of Rs.20,000/- towards Attenders Charges, a sum of Rs.20,000/- towards Future Medical Expenses and a sum of Rs.15,000/- towards Loss of Income during the period of treatment, a sum of Rs.1000/- towards Damage to clothing. Accordingly, the award of the Tribunal stands enhanced as follows:-

S.No.	Head	Amount granted(Rs.)
1.	Loss of Income during the period of Treatment	Rs.15,000/-
2.	Loss of Earning Capacity	Rs.2,38,680/-
3.	Pain and Sufferings	Rs.1,00,000/-
4.	Transportation Charges	Rs.20,000/-
5.	Nutrition and Extra Nourishment	Rs.25,000/-
6.	Loss of Amenities	Rs.1,00,000/-
7.	Attenders Charges	Rs.20,000/-
8.	Medical Expenses as per Ex.P11	Rs.48,899/-
9.	Future Medical Expenses	Rs.20,000/-
10.	Damage to clothing	Rs.1000/-
Total Compensation		Rs.5,88,579/-

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.
No costs.

(ii) The award amount is enhanced from Rs.3,08,800/- to Rs.5,88,579/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) As per the above said decision since at the time

of the accident driver of the offending vehicle did not possess valid and effective driving license, the second respondent / Insurance Company is directed to pay the amount to the appellant and recover the same from the first respondent. Time for deposit balance of the amount is eight weeks.

(iv) On such deposit, the appellant is permitted to withdraw the amount with accrued interest.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rna

To

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

Copy to: The Section Officer,
Vernacular Record,
High Court, Madras-104.

+1cc to Mr.G.Balaji Prasad, Advocate SR.36170

+1cc to Mr.S.Manohar, Advocate SR.35835

C.M.A.No.2999 of 2012

RSK(CO)
CB(05/02/2020)

सत्यमेव जयते

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