

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

C O R A M

The Hon'ble Mr.Justice M.M.Sundresh  
and  
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3525 of 2019

Indira ...Appellant/Petitioner

Vs

1) A.Chokkalingam

2) The United India Insurance Co., Ltd.,  
Old No.14, New No.27, Sudarsan Building,  
Whites Road, Chennai - 14. .. Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed against the judgment and decree, dated 13.06.2018, passed in M.C.O.P.No.6799 of 2013, on the file of the Motor Accident Claims Tribunal (III Small Causes Court, ) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent-1 : Notice Sent

For Respondent-2 : Mr.P. Sankara Narayan

JUDGMENT

Judgement of the Court was delivered by Krishnan Ramasamy,J.

This Civil Miscellaneous Appeal has been filed by the claimant, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal cum III Judge, Small Causes Court, Chennai, in and by its award, dated 13.06.2018, in M.C.O.P.No.6799 of 2013.

2. The appellant herein is the petitioner/claimant before the Tribunal. It is the case of the claimant that on 01.09.2013 at about 15.30 hours, when the claimant along with her mother were travelling in a Car, bearing Regn.No.TN-07-AZ-1546, at Palaveli Village, Near Palaveli Burial Ground, the said

Car was driven by its driver in a very rash and negligent manner, and hit the front side of the moving unknown Lorry, due to which, the Car turned upside down and thereby, the petitioner/claimant and other travelers were thrown away. In the said accident, the claimant sustained grievous crush injuries. Since the accident occurred due to the rash driving of the driver of the Car, the claimant filed a Claim Petition against the insured as well as the insurer, claiming a sum of Rs.10,00,000/-.

3. The owner of the offending Vehicle, the first respondent herein, the Insured, remained ex parte before the Tribunal.

4. The Insurance Company resisted the Claim Petition by filing a Counter Statement, denying all the averments set out in the Claim Petition and prayed for dismissal of the Claim Petition.

5. Before the Tribunal, in order to prove the claim, claimant examined herself as P.W.1, besides examining one other witness as P.W.2 and marked ten documents as Exs.P.1 to P.9 and Ex.P.13. On behalf of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Tribunal, on the basis of both oral and documentary evidence held that the accident was on account of rash and negligent driving of the driver of the Car. By arriving at such conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.6,22,100/- with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the claimant and directed the Insurance Company to pay the amount. The break up details of the compensation amount awarded by the Tribunal are as follows :-

| Sl.N<br>o | Head                    | Award         |
|-----------|-------------------------|---------------|
| 1         | Functional Disability   | Rs.5,26,500/- |
| 2         | Pain and Suffering      | Rs. 50,000/-  |
| 3         | Attender Charges        | Rs. 1,600/-   |
| 4         | Extra Nourishment       | Rs. 5,000/-   |
| 5         | Transportation          | Rs. 5,000/-   |
| 6         | Damages to clothes      | Rs. 1,000/-   |
| 7         | Medical Expenses        | Rs., 5,000/-  |
| 8         | Future Medical Expenses | Rs. 5,000/-   |
| 9         | Loss of Income          | Rs. 13,000/-  |

| Sl.No | Head              | Award          |
|-------|-------------------|----------------|
| 10    | Loss of Amenities | Rs. 10,000/-   |
|       | Total             | Rs. 6,22,100/- |

7. Aggrieved by the quantum of compensation awarded by the Tribunal as inadequate, the claimant has filed the present Appeal, and during the pendency of the Appeal, the appellant/claimant filed a Miscellaneous Petition in C.M.P.No.17280 of 2019 seeking to amend the claim to a sum of Rs.35,00,000/- and the said Petition was ordered by this Court, vide order dated 09.08.2019.

8. It is the contention of the learned counsel appearing for the appellant/claimant that the disability sustained by the claimant was assessed by the Doctor as 90%, whereas, the tribunal has taken only 45% disability and determined the compensation towards Functional Disability, which resulted in awarding meager sum. Further, the learned counsel submitted that the claimant was 38 years old at the time of the accident, and she was working as Sales Woman in a Medical Shop and earning Rs.500 per day, but, the Tribunal has taken the monthly income of the claimant at Rs.6,500/- by following the judgment of the Hon'ble Supreme Court, in Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459. Though the learned counsel fairly admitted that no documents were produced by the claimant to prove the monthly income, however, by referring to the very same judgment relied upon by the Tribunal, he submitted that the Hon'ble Supreme Court fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident occurred even in the year 2008 and in the present case, the accident occurred in 2013, and hence, the Tribunal ought to have fixed suitable monthly income depending upon the increase in the cost of living at present. Therefore, he submitted that atleast a sum of Rs.10,000/- may be fixed as notional income of the claimant.

8.1 Further, the learned counsel contended that the Tribunal failed to add anything towards future prospects. The learned counsel further contended that the compensation amount of Rs.50,000/- for pain and suffering awarded by the Tribunal are on the lower side and the same needs proper enhancement. The learned counsel also contended that the compensation awarded by the Tribunal under the head Future Medical Expenses at Rs.5,000/- is too low and in fact, the claim made under the said head is for Rs.1,00,000/-, since, due to the accident, the claimant sustained 90% disability, and she has to take further treatment in future and therefore, the same requires appropriate enhancement. The learned counsel also contended even the compensation awarded by the Tribunal under other heads are also

low and thus, prayed for appropriate enhancement.

9. On the other hand, the learned counsel for the second respondent/Insurance Company fairly admitted that the notional monthly income fixed by the Tribunal is slightly incorrect, and suggested that a sum of Rs.7,500/- may be fixed as notional monthly income of the claimant. Insofar as the award passed by the Tribunal in all others aspects is concerned, he submitted that the same is just and proper and requires no interference.

10. We have heard the submission made on either side and gone through the materials on record.

11. So far as the percentage of disability taken by the Tribunal while determining the loss of Functional Disability, i.e at 45% is concerned, we find the same to be just and proper, as the Tribunal has rightly found that the disability sustained by the claimant is partial permanent disability, and she has not undergone any major surgery and she was treated conservatively, and with such disability, she is finding difficult only to use her hand as before and often suffers from giddiness and headache.

11.1 Insofar as the monthly income fixed by the Tribunal is concerned, we completely agree with the contention of the learned counsel for the appellant/claimant that the Tribunal was not right in taking the monthly income of the claimant at Rs.6,500/-. The claimant was 38 years old at the time of the accident, and she was working as Sales Woman in a Medical Shop and earning Rs.500 per day. The Tribunal may be right in following the decision of the Hon'ble Supreme Court in Syed Sadiq's case, in fixing the monthly income of the claimant, but, the Tribunal failed to take into consideration of the vital factor that, in that case, the accident had occurred in the year 2008, and based on the cost of living prevailing at that point of time, the Hon'ble Supreme Court fixed the notional income of a vegetable vendor at Rs.6,500/-, whereas, in the present case, the accident occurred in the year 2013, and therefore, the Tribunal ought to have taken into consideration of the present cost of living and depending upon the same, should have fixed the monthly income of the claimant. Therefore, we are of the view that, the notional income taken by the Tribunal at a sum of Rs.6,500/-is inadequate and the same is modified and enhanced to a sum of Rs.8,000/-.

11.2 Further, the Tribunal has failed to award anything towards future prospects and as held by the Hon'ble Supreme Court in re National Insurance Co. Ltd. Vs. Pranay Sethi and others, reported in 2017 2 TNMAC 609 (SC the claimant is

entitled to 40% of the income towards future prospects. Thus, by taking the monthly income of the claimant at Rs.8,000/- and by adding 40% of the income towards future prospects, and by applying the same multiplier of '15' for the age 38 years, and adopting the same percentage of disability at 45%, the loss of functional disability is determined as follows:-

$$\text{Rs.8,000/-} + \text{Rs.3,200/-} = \text{Rs.11,200/-}$$

$$\text{Rs.11,200} \times 12 \times 15 \times 45/100 = \text{Rs.9,07,200/-}$$

11.3 So far as the compensation awarded by the Tribunal towards Pain and Suffering at Rs.50,000/- is concerned, we are of the view that the same is low. Admittedly, due to the accident, the claimant suffered brachial plexus injury with root involvement, due to which, she cannot move her hand and the claimant also underwent treatment for a considerable period and the sufferings underwent by her during the treatment period has to be taken into consideration for awarding just and proper compensation. Therefore, we are inclined to award a sum of Rs.1,00,000/- towards Pain and Sufferings, as sought for in the claim petition. Similarly, the compensation awarded by the Tribunal towards Extra Nourishment and Transportation at Rs.5,000/- each are low and the same stands revised to a sum of Rs.25,000/- and Rs.10,000/- respectively. Like the same, the compensation awarded by the Tribunal towards attender charges at Rs.1,600 is too low and the same stands revised to a sum of Rs.50,000/- So far as the sum of Rs.1,000/- awarded by the Tribunal towards Damages to Clothes and Rs.5,000/- awarded towards Medical Expenses are concerned, we are of the view that the same are just and proper, and we confirm the same. As rightly pointed out by the learned counsel for the claimant the sum of Rs.5,000/- awarded by the Tribunal towards Future Medical Expenses is very low and we revise the same into a sum of Rs.1,00,000/-.

11.4 Further, it is seen that the Tribunal has awarded a sum of Rs.13,000/- towards Loss of Income. Since we have revised the monthly notional income of the claimant at Rs.8,000/- and added 40% towards future prospect and determined compensation accordingly towards Functional Disability, at Rs.9,07,200/-, we feel that there is no need to award compensation under a separate head of Loss of Income, and we set aside the same. Insofar as the sum of Rs.10,000/- awarded by the Tribunal towards Loss of Amenities is concerned, the same is revised to a sum of Rs.50,000/-. Thus, we determine the total compensation awarded by the Tribunal in the following manner:-

| Sl.No | Head                    | Tribunal Award | High Court Award | Modified/confirmed/setaside |
|-------|-------------------------|----------------|------------------|-----------------------------|
| 1     | Functional Disability   | Rs.5,26,500/-  | Rs.9,07,200/-    | Modified                    |
| 2     | Pain and Suffering      | Rs.50,000/-    | Rs.1,00,000/-    | Modified                    |
| 3     | Attender Charges        | Rs.1,600/-     | Rs.50,000/-      | Modified                    |
| 4     | Extra Nourishment       | Rs.5,000/-     | Rs.25,000/-      | Modified                    |
| 5     | Transportation          | Rs.5,000/-     | Rs.10,000/-      | Modified                    |
| 6     | Damages to clothes      | Rs.1,000/-     | Rs.1,000/-       | Confirmed                   |
| 7     | Medical Expenses        | Rs.5,000/-     | Rs.5,000/-       | Confirmed                   |
| 8     | Future Medical Expenses | Rs.5,000/-     | Rs.1,00,000/-    | Modified                    |
| 9     | Loss of Income          | Rs.13,000/-    | Nil              | Set aside                   |
| 10    | Loss of Amenities       | Rs.10,000/-    | Rs.50,000/-      | Modified                    |
|       | Total                   | Rs.6,22,100/-  | Rs.13,83,200/-   |                             |

12. Consequently, the total compensation amount of Rs.6,22,100/- awarded by the Tribunal is hereby modified and enhanced to Rs.13,83,200/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

13. Therefore, we direct the second respondent/Insurance Company to deposit the entire compensation amount of Rs.13,83,200/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. Further, we direct the Tribunal to transfer the entire compensation amount to the claimant bank account by way of RTGS within a period of three weeks from the date of deposit made by the Insurance Company. The claimant is also directed to deposit the deficit Court fee, if any, before receiving the order copy.

14. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-  
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

sd

To

The Motor Accident Claims Tribunal  
(III Judge, Small Causes Court, ) Chennai.

Copy To

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

+2ccs to Mr.K.Varadha Kamaraj, Advocate SR.No.102732

+1cc to Mr.P. Sankara Narayan, Advocate SR.No.102869

C.M.A.No.3525 of 2019

PM(CO)  
GMY(06/05/2021)