



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.107 of 2018

S.Andal .. Appellant/Petitioner

Vs.

1.N.Sabarinathan

2.The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager
Bali Towers 1st Floor,
1, Abdul Razzack Street,
Saidapet, Chennai-600 015. .. Respondents/Respondents

(1st respondent remained ex-parte before the Trial Court and notice may be dispensed with in the appeal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.11.2017 and made in M.C.O.P.No.160 of 2014, on the file of the Motor Accident Claims Tribunal, Chief Metropolitan Magistrate, Vellore.

For Appellant : Mr.P.Satheesh Kumar

For R1 : No Appearance

For R2 : Mr.M.J.Vijayraghavan

JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 21.11.2017 made in M.C.O.P.No.160 of 2014, on the file of the Motor Accident Claims Tribunal, Chief Metropolitan Magistrate, Vellore.

2.The appellant is claimant in M.C.O.P.No.160 of 2014, on the file of the Motor Accident Claims Tribunal, Chief Metropolitan Magistrate, Vellore. She filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on



07.05.2014. The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent/rider of the motorcycle and appellant are equally responsible for the accident and fixed 50% negligence on the part of the rider of the motorcycle and balance 50% negligence on the part of the appellant and awarded a sum of Rs.1,30,241/- as compensation and directed the 1st respondent to pay 50% of the compensation i.e Rs.65,120.50/- and dismissed the claim petition against the 2nd respondent. Challenging the 50% contributory negligence fixed on the part of the appellant and seeking enhancement of compensation the appellant has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal erred in exonerating the 2nd respondent/Insurance company on the ground that 1st respondent did not possess driving license at the time of accident and erred in fixing 50% contributory negligence on the part of the appellant. The Tribunal ought to have awarded a sum of Rs.2,00,000/- for disability suffered by the appellant. The amounts awarded by the Tribunal under different heads are meagre. The Tribunal ought to have ordered pay and recovery as per the judgment of Hon'ble Apex court and this Court and prayed for setting aside the portion of award exonerating the 2nd respondent/Insurance Company and fixing 50% contributory negligence and prayed for enhancement of compensation.

4.Per contra, Mr.M.J.Vijayaraghavan, learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident occurred only when the appellant negligently tried to cross the National Highway. The Tribunal has awarded compensation under different heads which are not meagre. The rider of the motorcycle, the 1st respondent herein did not possess driving license at the time of accident. Hence, the Tribunal rightly exonerated the 2nd respondent/Insurance company and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials on record, it is seen that the accident has occurred in four lane National Highway, while the appellant tried to cross the road. The Tribunal considering the fact that the 1st respondent was riding the motorcycle at a high speed and appellant tried to cross the road in a rash and negligent manner, fixed equal negligence on the part of the appellant as well as the 1st respondent. Considering the materials on record,



50% negligence fixed by the Tribunal on the appellant is not correct and the same is reduced to 20%. The Medical Board assessed that appellant suffered 35% partial permanent disability. The Tribunal accepting the percentage of disability assessed by the Medical Board, awarded a sum of Rs.70,000/- towards permanent disability at the rate of Rs.2,000/- per percentage. The accident is of the year 2014. The appellant is entitled to a sum of Rs.3,000/- per percentage. The amount awarded by the Tribunal towards permanent disability is modified to Rs.1,05,000/- (Rs.3,000/- x 35). The amounts awarded by the Tribunal under different heads are not meagre and the same are confirmed. The Tribunal exonerated the 2nd respondent/Insurance Company on the ground that the 1st respondent did not possess driving license at the time of accident. The said reasoning for exonerating the 2nd respondent/Insurance Company is erroneous. It is well settled that even if the driver who caused the accident did not possess driving license, the Insurance company cannot be fully exonerated. The Insurance company has to pay the compensation at the first instance and recover the compensation paid from the owner of the vehicle. In view of the well settled judicial pronouncement, the award of the Tribunal is modified directing the 2nd respondent to pay the compensation awarded at the first instance and recover the same from the owner of the vehicle. The 2nd respondent is directed to pay 80% of the amount awarded and recover the same from the 1st respondent/owner of the vehicle. Thus, the amounts granted by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Suffering	25,000	25,000	Confirmed
2.	Permanent Disability	70,000	1,05,000	Enhanced
3.	Medical Expenses	5,241	5,241	Confirmed
4.	Transportation	10,000	10,000	Confirmed
5.	Extra Nourishment	10,000	10,000	Confirmed
6.	Attendant Charges	10,000	10,000	Confirmed
	Total	1,30,241	1,65,241	Enhanced by Rs.67,072/-
	50% of the award amount	65,120	-	
	80% of the award amount	-	1,32,192	



8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,120/- is hereby enhanced to Rs.1,32,192/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of two weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Chief Metropolitan Magistrate,
Motor Accidents Claims Tribunal,
Vellore.

Copy to : The Section Officer, VR Section,
High Court, Madras.

+1 cc to M/s.M.J.Vijayaraghavan, Advocate Sr.No. 25310
+1 cc to M/s.P.Satheesh Kumar, Advocate Sr.No. 25287

AKM/05.11.19/4P-5C/

C.M.A.No.107 of 2018