

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.570 of 2014 &
C.M.P.No.1 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
Sorrento Building, 1st Floor, 6, Lattice Bridge Road,
Adyar, Chennai - 600 020.

... Appellant/3rd Respondent

Vs.

1. Dr.S.Kalpana ... 1st Respondent/Petitioner
2. P.Govindaraj
3. K.Shanmugham ... 2 & 3 Respondents /1 & 2 Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 18.04.2013 MACT.O.P.No.732 of 2012 on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Coimbatore.

For Appellant : Mr.Elaveera Ravindran

For respondents: Mr.MA.P.Thangavel - R1
: RR2 & 3 Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 18.04.2013 passed in MACT.O.P.No.732 of 2012 on the file of the Special Sub Court, (Motor Accidents Claims Tribunal), Coimbatore.

2. The case of the claimant before the Tribunal is that on 09.01.2009 at about 8.10 a.m. the claimant was driving her Maruthi Zen Car bearing Registration No.TN.38 T 4433 from north to South direction from Mettupalayam to Coimbatore and at that time she had stopped her car behind the TNSTC bus bearing registration No.TN.38 N 1607 which has been stopped for traffic near Chennai electronic shop near Thiruvalluvar Nagar bus stop on the Combatore to Mettupalayam road near Press colony, Coimbatore. Within a minute a Tipper lorry bearing registration No.TN 33 AL 4163 which came in a high speed and in a rash and

negligent manner suddenly hit the petitioner's car from behind and due to which the Maruthi car jammed with TNSTC bus's rear portion and the tipper lorry front portion rammed into rear portion of the Maruthi Zen car. The petitioner and her son were trapped inside the car and the petitioner sustained multiple severe injuries. The petitioner is aged about 32 years and working as a Doctor at Dr.Mirdhubashini Womens Centre, Coimbatore and earns a sum of Rs.1,00,000/- per month. Hence, the petitioner claims compensation for a sum of Rs.30,00,000/- with interest.

3. The first and second respondents remained absent before the trial Court and therefore, they was set exparte before the Court below.

4. The third respondent had filed a counter denying all the averments and submitted that the petitioner stopped her car without any indication and without noticing the lorry coming from behind. It is further stated that if the petitioner is entitled for any compensation, the same deserves to be apportioned equally on account of significant contributory negligence. The age, occupation, income and the permanent disability of the petitioner is denied. The compensation claimed by the petitioner under various heads is highly excessive and baseless. Hence, prayed for dismissal of the petition.

5. The Court below after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded a sum of Rs.7,52,500/- as compensation. Aggrieved over the same, the appellant has filed this appeal before this Court.

6. The Insurance company aggrieved over the quantum of the award awarded as compensation had filed this appeal stating that the negligence on the part of the claimant has not been taken into account by the Court below. The learned counsel for the appellant contended that due to claimant's act of stopping the car in the middle of the road without showing any signal, 50% of the negligence has to be attributed to the claimant and hence, 50% of the award has to be reduced. The counsel for the appellant further submitted that the salary certificate produced by the claimant would go to show that the claimant did not get fixed sum as salary and there is difference in the salary and the Court below has erroneously fixed 5 months salary under the head of loss of income. But from the third month of the accident, some amount has been credited to the account of the claimant, which would show that she has been working from the third month of the accident. He would further submit that disability has been fixed at 35% based on the would certificate

and the same has not been considered properly and the same has to be reduced.

7. The learned counsel for the respondent/claimant would submit that she has worked in the Mridubashini Womens Centre and she has been given salary for each and every case and that is why there is a variation in the amount received by her as salary and for the month of January, she has worked for 9 days and hence, Rs.25,000/- salary has been deposited in her account. Similarly, for the other two months, a basic salary of Rs.25,000/- has been credited to her account, when she was undergoing treatment and therefore, it cannot be said that there is variation in salary. Hence, the well considered award of the Court below needs no interference.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondent, and perused the materials available on record.

9. The contention of the learned counsel for the appellant is that the claimant stopped her car in the middle of the road without showing any indication and due to her negligence, the accident has occurred and hence, 50% of the negligence has to be attributed on the claimant. On a perusal of the sketch, it could be seen that the bus had stopped at the bus stand for the passengers to get down from the bus. Hence, the claimant also stopped her car behind the bus and waiting for the bus to move and the tipper lorry which came behind the car of the claimant, in a rash and negligent manner, and dashed the car of the claimant, due to which the accident had occurred and the car of the claimant got rammed between the tipper lorry and the bus. Such being the position, it is clear that there is no negligence on the part of the claimant and the negligence is only on the part of the tipper lorry driver.

10. The further contention of the appellant is that the Court has awarded huge amount of compensation without any basis. On a perusal of the records, it is seen that the claimant had claimed that she had taken treatment for 6 months for the disability and the Court below instead of 6 months reduced the same to 5 months and awarded a sum of Rs.3,50,000/- for partial loss of earning. As pointed out by the learned counsel for the appellant, from February to June 2012, some amounts have been credited as salary to the claimant. Hence, a Rs.60,000/- has to be deducted and only the rest of the amount, i.e., a sum of Rs.2,90,000/- has to be fixed towards partial loss of disability. Under the head of partial permanent disability, the Court below has rightly fixed Rs.2500/- per percent for compensation for the partial permanent disability and Rs.87,500/- has been awarded towards the said head. The

claimant has produced the medical bills for the treatment taken by her and hence, the amount awarded under the above head is confirmed. Similarly, the Court below has considered entire materials and rightly awarded Rs.5000/- towards transportation to hospital and for extra nourishment Rs.5000/- and for medical bills Rs.2,62,000/- and for physiotherapy Rs.23,000/- and for pain and sufferings Rs.20,000/- have been awarded and the amount awarded under the above heads are also confirmed. Thus, the compensation awarded 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.	For permanent disability	87,500/-	87,500/-	confirmed
2.	Pain and suffering	20,000/-	20,000/-	confirmed
3.	Medical Bill	2,62,000/-	2,62,000/-	confirmed
4.	Partial loss of disability	3,50,000/-	2,90,000/-	reduced
5.	Physiotherapy	23,000/-	23,000/-	confirmed
6.	Extra Nourishment	5,000/-	5,000/-	confirmed
7.	Transportation to hospital	5,000/-	5,000/-	confirmed
	Total	7,52,500/-	6,92,500/-	Reduced by 60,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,52,500/- is hereby reduced to Rs.6,92,500/-. No cost. Consequently, the connected miscellaneous petition is closed.

12. The learned counsel for the appellant submitted the insurance company has already deposited 50% of the awarded amount. Hence, the appellant is directed to deposit the balance amount within a period of eight weeks with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal. After the entire amount has been deposited by the appellant, insurance company, the first respondent can withdraw the same by filing a formal

petition before the concerned Court. The amount already deposited by the appellant can be withdrawn by the first respondent from the Court below.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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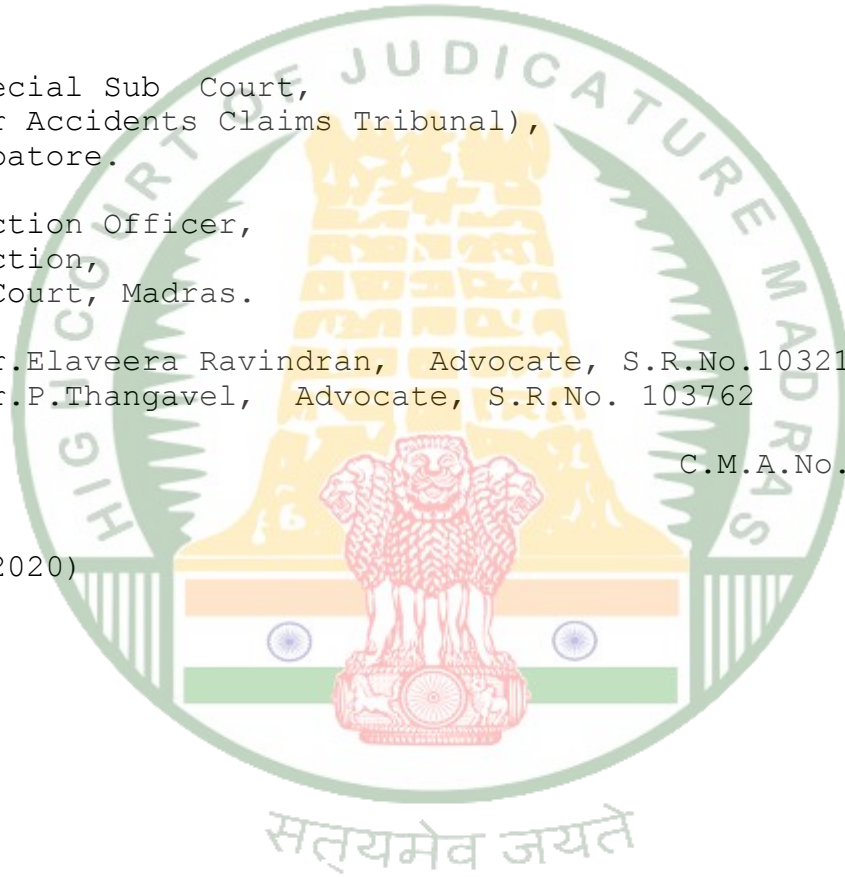
1. The Special Sub Court,
(Motor Accidents Claims Tribunal),
Coimbatore.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Elaveera Ravindran, Advocate, S.R.No.103214

+1cc to Mr.P.Thangavel, Advocate, S.R.No. 103762

C.M.A.No.570 of 2014

NRJK(CO)
GN(18/12/2020)



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