IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2020	Pronounced on: 27.08.2020

CORAM
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1173 of 2016

M.Ramya ...Appellants

/versus/

1.G.Ekambaram

2.Reliance General Insurance Co.Ltd.,
No.2054, II Avenue, Anna Nagar East,
Chennai-600 040. ...Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 07.08.2015 in M.C.O.P.No.1035 of 2011 on the file of Motor Accidents Claims Tribunal, II Additional District Judge, Poonamallee.

For Appellant	: Mr.K.Suryanarayan For Mr.P.Natarajan
For R1	: Ex parte
For R2	: Mrs. C.Bhuvana Sundari

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is preferred by the claimant for enhancement of compensation under the Motor Vehicles Act.

2. The claimant on 28.10.2011, at about 20.30 hours while travelling on the GST Road riding TVS Scooty bearing registration No.TN 22 BP 6576 near M.I.T over bridge at Chrompet, Autorickshaw bearing registration No. TN 22 AJ 2364 driven by his driver at high speed, negligently dashed her scooty. In the impact, the claimant sustained multiple grievous injuries. Initially, she was admitted in the Parvathy hospital at Chrompet. Since her right eye vision totally lost in the accident, she was referred to Sankara Nethralaya and then got treated at Vijaya Health Centre at Vadapalani. Due to the loss of vision and fracture in her face, she is not able to carry on her day to day life. She quit her job due to the disability. Hence claim of Rs.15,00,000/- against the driver of the autorickshaw and the Insurance Company.

3. The said petition is contested by the Insurance Company on the following grounds:

The accident occurred due to the negligence of the claimant by driving the vehicle without proper insurance and driving license. Due to her rash and negligent driving without following the traffic rules and regulations while moving up gradient of the M.I.T over bridge Crompet, she skid and fall. Her two wheeler hit against the side median. In the impact she sustained injury. The FIR was lodged by her husband belatedly with a fabricated one. The auto driver has no valid driving license. Owner of the auto had permitted the 1st respondent to drive the auto without valid driving license, which amounts to policy violation.

4. The Tribunal, on considering the rival plea and the material placed by the claimants and the respondent/Insurance Company has awarded a sum of Rs.5,09,000/- as compensation.

5. The learned counsel for the appellant would submit that the claimant a BBA graduate was working as Marketing Executive in the Just Dial Tele Marketing Company. She was earning around Rs.10,000/- p.m., but due to the injury, she was not able to continue her job, so resigned. The Tribunal ought to have taken the disability as a permanent disability leading to loss of earning capacity. Multiplier as per schedule II of the Employer Compensation Act should have been applied. Besides the schedule injury namely loss of right eye vision, the claimant also sustained non schedule injury namely the fracture zygoma right orbital floor and medial walls of orbit, for which PW.4 Dr. Mathiyazhagan has assessed the disability as 25%. The Tribunal has not awarded just and fair compensation proportionate to the disabilities and loss of income.

6. The learned counsel appearing for the Insurance Company would submit that the claimant herself has admitted in her chief examination that after the accident she joined duty and she was given increment. She left the job on her own after eight months. Therefore, there cannot be any loss of earning capacity as contended by the appellant. Further the Tribunal considering the schedule disability and non schedule disability has awarded Rs.1,70,000/- towards schedule injury namely loss of right eye vision. For the non schedule injury of fracture which has been cured after treatment has awarded Rs.50,000/- at the rate of Rs.2,000/-per percentage of disability. For the loss of amenities, Tribunal has awarded another One lakh along with Rs.50,000/- towards loss of future income. Besides Rs.60,000/- for the loss of income during the treatment period. The Tribunal has taken note of the loss incurred by the claimant both physical and financial and has awarded more than a just compensation. Pointing out that for pain and suffering, the Tribunal has awarded Rs.30,000/- and again Rs.1,00,000/- been awarded for loss of amenities, which amounts to double compensation. Further it is seriously emphasized by the learned counsel for the respondent/Insurance Company that the claimant had no driving license. Without driving license she has driven the motor cycle, but for her negligence accident could not have occurred. For the said violation, the Tribunal ought to have deducted 50% towards contributory negligence. Therefore, the award of the Tribunal is excessive. Hence the appeal seeking enhancement deserves to be dismissed.

7. Repudiating the said contention, the learned counsel for the appellant would submit that it is a settled principle of law that for schedule injury multiplier should be applied. Also submitted that, the Tribunal has not paid any compensation for loss of future prospects, which the claimant is entitled.

8. The rival submissions of the learned counsels considered. Records perused.

9. The First Information Report – Ex.P-1 though given by the husband of the claimant, he was not present at the seen of occurrence. The case has been registered against the 1st respondent in Cr.No.1758 of 2011 dated 28.10.2011 by the Mount Traffic Police, Pallavaram as against the driver of the auto bearing registration No.TN 22 AJ 2364. On completion of investigation, police has filed a final report against him Egambaram, S/o. Ganesan before the Judicial Magistrate, Tambaram. Ex.P3 – Traffic chellan indicates that the accused was convicted and fine of Rs.1,500/- imposed on him. Fine amount was paid on 10.01.2012 in STC.No.151 of 2012 before the Judicial Magistrate, Tambaram. Contra to this evidence, there is no evidence to show the accident was occurred otherwise. But then, there is a specific allegations against the claimant that she had no driving license and therefore negligence on her part has to be presumed. Any person who drive the motor vehicle without driving license, there cannot be a presumption they lack skill to drive the vehicle. However when law mandates driving license is a must to drive the vehicle, the negligence on the part of the violator is presumable. Driving the vehicle without license is per se a traffic violation, even under a beneficial legislation, such violation could not be rewarded. The award if any, has to be reduced proportionate by their violation. In this case, this Court is of the opinion that whatever the compensation to be fixed 15% out of it has to be deducted towards contributory negligence on the part of the claimant by driving vehicle without driving license.

10. As far as the earning capacity of the claimant, the Tribunal has fixed Rs.10,000/- p.m.. To substantiate this, the claimant has filed the appointment order Ex.P-20 dated 01.09.2010. Whereas, the employer has mentioned the Assured Gross Income will be Rs.10,000/-. The basic pay is shown as Rs.6,600/- HRA, conveyance charge and additional allowances are mentioned in the Ex.P-20. After the accident, the claimant has continued her job. From 10.05.1992, she was given an increment fixing the gross annual income as Rs.1,62,000/- . The increment order is marked as Ex.P-22. The pay bill for the month of December 2012 Ex.P-23 indicates her basic pay as Rs.7,647/- with HRA of Rs.2163/- and other allowances like departmental allowances and desk allowance totally Rs.13,763/-. This pay bill also indicates that her contribution for ESI Rs.229/- has been deducted.

11. The bank pass book statement of the claimant is marked as Ex.P-24, which indicates that the claimant was earning a sum of Rs.10,000/- p.m., average. Therefore, this Court finds no error in the fixation of monthly income by the Tribunal as Rs.10,000/-.

12. Regarding the disability, the evidence of PW.4 Dr.Mathiyazhagan indicates that the claimant has sustained both schedule injury (loss of right eye vision) and non schedule injury (Fracture zygoma right orbital floor and medial walls of orbit) non schedule injury cured after treatment.

13. The doctor has assessed the disability as 25% for non schedule injury and 40% for the schedule injury. In view of this Court, the photograph of the claimant marked as one of the exhibits indicates that the claimant has recovered from the non schedule injury except displacement of her right eye leading to loss of vision. Therefore, this Court fixed as 30% permanent disability towards loss of earning capacity for loss of one eye vision as per schedule II of the Employees Compensation Act, 1923 and apply the multiplier for the loss of right eye vision. For the loss of earning capacity due to loss of vision, the compensation is fixed as under:

14,000X12X18X30%.

14. The compensation to the claimant/appellant is modified and enhanced as below:

Loss of earning capacity (14,000 X 12 X 18 X 30%)	Rs.9,07,200
For Pain and Suffering	Rs.30,000/-
Nutrition Food	Rs.25,000/-
Loss of Clothing	Rs. 1,000/-
Medical Expenses	Rs.63,000/-
Loss of income during the treatment period (10,000 X 4 + Rs.40,000/-)	Rs.40,000/-
Transport	Rs.10,000/-
Loss of amenities	Rs.25,000/-
Total	Rs.11,01,200
Contribution negligence for driven without driving license 15% less (11,01,200X15/100) = Rs.1,65,180	Rs.9,36,020/-

15. The second respondent Insurance Company is directed to deposit the above award amount of Rs.9,36,020/- with interest at the rate of 7.5% from the date of petition till the date of deposit. On such deposit the claimant shall withdraw the same on filing appropriate petition.

16. In the result, the **Civil Miscellaneous Appeal is partly allowed**.

With costs.

27.08.2020

Index : Yes/No
Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge,
Poonamallee.

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

Dr.G.JAYACHANDRAN,J.

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Pre delivery Judgment in
C.M.A.No.1173 of 2016

27.08.2020