IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.12.2020	Pronounced on:10.12.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2188 of 2015

P.Parameswari .. Appellant /Petitioner

/versus/

1.I.Tajbasha

2.The Oriental Insurance Company Ltd.,
C.B.O., 7 Kamal Arcade, No.669,
Anna Salai, Chennai-6. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 24.02.2015 made in M.C.O.P.No.3902 of 2012 on the file of Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellant :Mr.K.Varadhakamaraj

For Respondents:Mr.J.Chandran for R2
No appearance for R1

JUDGMENT

(The case has been heard through video conference)

This appeal is filed by the claimant for enhancement of compensation.

2.On 30.07.2012 at about 07.30 p.m., when the claimant was walking along the left extreme side of Dr.Natesan Salai, near Mosque, a two wheeler bearing Reg.No.TN06-E-9138 came from the opposite side rash and negligently and hit the claimant and caused grevious injury. She was admitted in a Private hospital for treatment and for her fracture injury in right tibla bone, she was operated on 31.07.2012 and rod was inserted. At the time of accident, the accident victim was working as a temporary Assistant Professor in Asan Memorial Institute of Management, Jaladampet, Chennai, drawing a sum of Rs.26,500/- per month. Claim petition for Rs.8,50,000/- was filed before the Claim Tribunal.

3.The 2nd respondent/Insurance Company filed counter stating that the claim petitioner suddenly crossed the road carelessly came in front of the motor cycle, which resulted in the alleged accident. The accident occurred solely due to the negligence on the part of the claimant and not because of the motorcycle rider. Further, the motorcycle rider had no valid driving license and the vehicle was not insured under them. Further, her income, age and other expenses supporting her claim petition are to be proved in the manner known to law. Hence, the Insurance Company is not liable to pay compensation to the victim.

4.Before the Tribunal, apart from the claimant, the Doctor, who gave the disability certificate and a staff of Asan Memorial College, where the claimant was working were examined as PW-1 to PW-3. 21 exhibits were marked in support of her claim.

5.On considering the evidence, the Tribunal held that the contention of the First Information Report, which implicates the motorcycle rider, has not been contradicted by the respondent-Insurance Company through acceptable evidence. Therefore, the negligence on the part of the motorcycle rider is proved. The defence of the Insurance company that the rider of the vehicle had no valid driving license and was not insured under them, were also rejected in the absence of contra evidence and held that the vehicle owner and the insurer of the vehicle-the 2nd respondent Insurance company are liable to pay compensation to the injured claimant.

6.Regarding the quantum, taking note of the fact that the victim was earning Rs.26,500/- as temporary Assistant Professor in the Private College and she possessed M.Com., M.B.A., Master of Corporate Secretaryship and B.Ed., qualification, the Tribunal awarded a sum of Rs.60,000/- for loss of earning during the treatment period and Rs.80,000/- for disability. In Total, a sum of Rs.3,41,000/- was awarded under the conventional and non-conventional heads.

7.The learned counsel appearing for the appellant/claimant, in support of the appeal for enhancement, submitted that leave sanction letter marked as Ex.P19 and Ex.P20 proves that the claimant was on leave from 31.07.2012 till June 2013 on loss of pay. While so, the Tribunal ought to have compensated the loss of pay for the period of 11 months at the rate of Rs.26,500/- instead of only Rs.60,000/- awarded towards loss of income during the treatment period.

8.Regarding the compensation of Rs.80,000/- given under the head of disability, the learned counsel appearing for the appellant/claimant submitted that the claimant had suffered mal-united fracture in right tibla, IL nail fixed. She suffered 50% movement of knee flexion. The Doctor has assessed 50% disability. The Tribunal has reduced it 40% and awarded a sum of Rs.80,000/- for disability. The injury caused has affected the future prospects of the claimant. Therefore, adequate compensation should be given under this head.

9.The learned counsel appearing for the 2nd respondent/Insurance Company submitted that the claimant suffered fracture in right tibla and was inpatient for 12 days. Thereafter, on her own wish, she has taken leave and therefore, she cannot claim compensation for those period. The assessment of disability by the Doctor in his certificate-Ex.P16 is excessive, since it is malunited fracture in one limb, the Tribunal has fixed 40% disability and has adequately compensated.

10.As far as the liability is concerned, the claimant has not produced the driving license of the offending vehicle driver (or) insurance of the offending vehicle to fix the liability on the respondent. Though the defence was specifically taken on this point, the Tribunal has erred in holding that the Insurance Company has failed to produce evidence. For non-insurance of the vehicle alleged to have been insured under them, it is the burden of the claimant to produce the insurance policy. Having failed to prove the positive, the Insurance Company cannot be expected to prove the negative. The Tribunal miserably failed in rejecting the plea of the Insurance Company regarding its contractual liability with the offending vehicle owner. In any event, having not filed appeal against the award on this ground, the learned counsel appearing for the appellant submitted that apart from the said defence, there is no merit in the case of the appellant seeking enhancement.

11.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent. Record perused.

12.The accident has occurred on 30.07.2012 at 07.30 pm. First Information Report was given by the father of the injured on 31.07.2012 at 16.00 hours. The claimant has neither produced the driving license of the motorcycle rider nor the insurance policy of the said vehicle. The Motor Vehicle Inspector's Report is not marked. Except the First Information Report, which indicate the victim of accident and the vehicle involved, there is no material to show that the vehicle was insured under the Insurance Company/2nd respondent. Though a specific defence was taken by the Insurance Company regarding the liability as insurer, the Tribunal has overlooked the fact and proceeded with computation of compensation. It has awarded Rs.60,000/- for loss of income during the treatment period. Actually, the treatment period as inpatient was 12 days and thereafter, she was asked to come for follow up medical examination and for removal of nail. Whether this prevented her from attending the duty, is not explained or proved. Therefore, the Tribunal has rightly awarded Rs.60,000/- under the said head, which is more than 2 months salary.

13.Regarding the disability of 40% fixed by the Tribunal, it is based on the disability certificate given by the Doctor for part of her body. The Tribunal has converted it for whole body and has fixed 40% disability with compensation of Rs.2,000/- per disability. One of the submissions made by the learned counsel appearing for the appellant is that since the accident occurred in the year 2012, the percentage of the disability at the rate of Rs.3000/- ought to have been awarded.

14.Taking note of the above submission and the records, this Court partially modifies the Tribunal award as below:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Enhanced/ Reduced/ Confirmed/
1.	Loss of income	60,000-00	60,000-00	Confirmed
2.	Transportation	10,000-00	10,000-00	Confirmed
3.	Extra Nourishment	10,000-00	10,000-00	Confirmed
4.	Damage to clothes	1,000-00	1,000-00	Confirmed
5.	Medical expenses	80,000-00	80,000-00	Confirmed
6.	Future Medical expenses	25,000-00	25,000-00	Confirmed
7.	Attender Charges	15,000-00	15,000-00	Confirmed
8.	Loss of amenities of life	25,000-00	25,000-00	Confirmed
9.	Mental agony to the petitioner and pain and suffering	35,000-00	35,000-00	Confirmed
10.	Disability of 40%	80,000-00 (at the rate of Rs.2000/- per disability i.e. 40% x 2000)	1,20,000-00 (at the rate of Rs.3000/- per disability i.e. 40% x 3000)	Enhanced
	Total	3,41,000-00	3,81,000-00	Enhanced

15.The award of the Tribunal is enhanced from Rs.3,41,000-00 to Rs.3,81,000-00 with interest at the rate of Rs.7.5% p.a from the date of petition till the date of realisation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant/appellant is permitted to withdraw the award amount with interest, (less the amount already withdrawn by him), on filing appropriate petition before the Tribunal.

16.In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ari

To:-

1.The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.

2.The Section Officer,
V.R. Section, High Court,
Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No. 40445

C.M.A.No.2188 of 2015

NRL(CO)
GN(07/04/2021)