



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2892 of 2013
and C.M.P. No.1 of 2013

The New India Assurance Co. Ltd.
No.482, 483, SNV Chambers,
(Near Power House Stop)
3rd Floor,
Coimbatore - 641 012.

...Appellant/3rd Respondent

Versus

1.Nandhini D/o. Sundarajan ...1st Respondent/Claimant

2.N. Bhavanishankar Bharathi D/o. Narasimha Barathi

3.S. Narasimha Barathi

(2nd & 3rd respondents are not necessary parties.

Hence, they are given up)

...Respondents 2 &
3/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the order and decree dated 18.03.2013 made in M.C.O.P.No.44 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Coimbatore.

For Appellant : Mr.R. Sivakumar
For Respondent-1 : Mr. Udhaya P.S.Menan

For Respondent 2&3 : Given up

J U D G M E N T

The Insurance Company has preferred this appeal against the Award and Decree in M.C.O.P.No.44 of 2013 dated 18.03.2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Coimbatore, questioning the liability on their side and the compensation on higher side awarded to the petitioner/1st respondent herein.

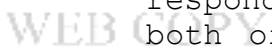


2. The appellant herein is the Insurance Company who was the 3rd respondent and 1st respondent is the injured person who was the petitioner before the Tribunal. The 2nd and 3rd respondents herein are the rider and owner of the offending vehicle respectively who were 1st and 2nd respondent before the Tribunal. For the convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The brief of the case is as follows:

On 02.03.2010, while the petitioner/1st respondent herein riding the bicycle on the Road of Mettupalayam to Coimbatore, 1st respondent/2nd respondent herein driving a Motor Bike bearing registration No.TN-36-H 5963, in a rash and negligent manner dashed against the petitioner/1st respondent herein. Due to the impact of the accident, the petitioner/1st respondent herein sustained grievous injuries all over the body and was admitted in the Hospital for treatment wherein various surgery were done to her. In view of the accident, the petitioner/1st respondent herein has preferred a claim petition in M.C.O.P. No.44 of 2013 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Coimbatore, seeking for compensation of Rs.7,50,000/- by which she was awarded a sum of Rs.2,50,500/- by the Tribunal as compensation. Being aggrieved over the aforesaid award passed in favour of the petitioner/1st respondent herein, the 3rd respondent-Insurance Company/appellant herein has preferred the present appeal against the award amount on higher side and questioning the liability on its side.

4. The learned counsel appearing for the Insurance company/appellant herein would submit that the Tribunal has erred in awarding the compensation in favour of the petitioner/1st respondent herein without considering the factum and manner of the accident. In fact, the petitioner/1st respondent herein has driven her bicycle in a rash and negligent manner without following traffic rules and regulations by which the aforesaid accident has occurred. But, the Tribunal, without considering the negligence on the part of the 1st respondent/2nd respondent herein, has fixed the whole liability on the Insurance company/appellant herein having come to the conclusion that the 1st respondent/2nd respondent herein has driven the vehicle in rash and negligent manner. Further, the Tribunal has awarded compensation of Rs.2,50,500/- on higher side to the petitioner/1st respondent herein for the alleged injuries sustained by the petitioner/1st respondent herein in the event of own negligence driving of the petitioner/1st respondent herein. Despite the petitioner/1st respondent has received a sum of Rs.1,65,790/- under mediclaim insurance as per Ex.P.14, the Tribunal has awarded a sum of Rs.1,68,000/- towards medical expenses without making note of it and deducting the same.



5. The learned counsel for the petitioner-claimant/1st respondent herein would submit that the Tribunal after perusing both oral and documentary evidence, has come to the conclusion that the accident has occurred due to rash and negligent driving of the 1st respondent/2nd respondent herein. As the vehicle was owned by the 2nd respondent/3rd respondent herein and insured with the 3rd respondent/appellant herein being in existence of policy at the time of the accident, the Tribunal has fixed the liability on the 3rd respondent-Insurance company/appellant herein to pay the entire compensation to the petitioner/1st petitioner herein for the injuries sustained in the accident. Since the petitioner/1st respondent herein was aged about 21 years being a young women and even she was got engaged for the marriage before the accident, after the accident, her marriage proposal was cancelled and she lost her marriage enjoyment and prospective life, the Insurance company is liable to pay compensation also under the head of loss of marriage prospective life. Further, as regards the quantum of compensation, it cannot be said that the compensation is on the higher side while considering the young women being engaged for the marriage and the same was cancelled in view of the accident whereby sustained grievous injuries all over the body and several surgery was done to her for the injuries. Hence, the appeal is not maintainable and liable to be dismissed in limini on the aforesaid basis.

6. Heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel for the 1st respondent and perused the material available on records. On the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P19 were marked. On the side of the respondents, neither any evidence was examined nor any document was marked.

7. On perusal of the award, it is seen that the Tribunal has come to the conclusion that the 1st respondent/2nd respondent herein has driven Motor cycle bearing registration No.TN-36-H-5963 in a rash and negligent manner and dashed against the petitioner/1st respondent herein which is corroborated comparing the evidence of P.W.1 along with Ex.P1, F.I.R. Ex.P3, Drawing, Ex.P4, Investigation final report, and Ex.P5, Brake Inspector report when there is no contra oral and documentary evidence on the side of the Insurance company/appellant herein. Hence, there is no dispute in the factum and manner of the accident under Section 163A of the Motor Vehicle Act with regard to rash and negligent driving of the 1st respondent/2nd respondent herein. However, the appeal has been filed on the main ground that even the petitioner has received a sum of Rs.1,58,790/- as per records, under Ex.P14- Mediclaim Insurance, which is wrongly



mentioned in the appeal as Rs.1,65,790/-, the petitioner was awarded a sum of Rs.1,68,000/- as compensation towards medical expenses.

8. In view of the above, it is to be genuine to raise question that when the petitioner was claiming a sum of Rs.1,58,790/- under Ex.P14, mediclaim against the bill, the Tribunal has awarded a sum of Rs.1,68,000/- towards medical expenses against the bill. Hence, this Court is of the considered view that the compensation on medical expenses is to be deducted out of the Medical expenses awarded to the petitioner. Hence, if an amount of Rs.1,58,790/- is deducted out of 1,68,000/-, the petitioner/1st respondent herein would be entitled for the balance amount of Rs.9,210/- under the head of Medical Expenses. Further, It is considered by this Court that the compensation on other heads were awarded by the Tribunal, after going through the entire evidence on record. Hence, this Court has confirmed the confirmed the compensation on other heads.

9. However, having considered the facts and circumstances of the case that as young lady was aged about 34 years, who sustained grievous injuries all over the body and surgery was done to her for the injuries in view of the aforesaid accident and even she was also engaged with one person for the marriage, due to the accident, the petitioner has lost not only her beauty but also her marriage prospective life since the marriage was canceled after the accident. Hence, the petitioner/1st respondent is entitled to get compensation for the loss of beauty for a sum of Rs.30,000/- and for the loss of future prospective of marriage life, a sum of Rs.100,000/-. Accordingly, the compensation is modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent disability @10%	25,000.00
2	Loss of Income for 15 days (2500*15)	2,500.00
3	Loss of income for 5 months having under went treatment as out-patient (5000 X 5 month)	25,000.00
4	Medical Expenses is reduced as the same is claimed under mediclaim	9,210.00
5	Transport expenses	5,000.00



SL. No.	Particulars	Amount (in Rs.)
6	Extra nutrition	5,000.00
7	Pain and sufferings	20,000.00
8	Lost of Beauty	30,000.00
9	Lost of marriage prospective life	100,000.00
Total Amount		T 2,21,710.00

10. Thus, the compensation awarded by the Tribunal has been reduced by Rs.28,790/- from 2,50,500/- to 2,21,710/- with interest @ 7.5% p.a. from the date of appeal till the date of deposit of amount. The appellant/Insurance Company is directed to deposit the aforesaid award amount within a period of three weeks from the date of receipt of copy of this Judgment after deducting the deposited amount if any. On such deposit, the claimant in the Tribunal/petitioner/1st respondent herein is permitted to withdraw the modified award amount as awarded by this Court.

11. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.44 of 2013 dated 18.03.2013. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed, if any.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

lbm

To:

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal cum
Chief Judicial Magistrate Court,
Coimbatore.



Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.R.Sivakumar, Advocate Sr.9765
+lcc to Mr.V.Vijayakumar, Advocate Sr.9770

C.M.A.No.2892 of 2013
and C.M.P. No.1 of 2013

sv[co]
srg 30/09/2021