

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3343 of 2013

S. Lalitha

... Appellant/Petitioner

Vs.

1. N. Nagaraj (set exparte before the Tribunal)
2. Bajaj Allianz General Insurance Co. Ltd.,
No.44, College Road,
Nungambakkam, Chennai - 600 034.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 19.09.2013 made in M.A.C.T. O.P.No.5787 of 2005 on the file of the II Judge, Small Causes Court (Motor Accidents claims Tribunal) at Chennai.

For Appellant	: Mrs.Subadra for Mrs.M.Malar
For Respondent-2	: Mr.K. Poomalai

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 19.09.2013 made in M.A.C.T. O.P.No.5787 of 2005 on the file of the II Judge, Small Causes Court (Motor Accidents claims Tribunal) at Chennai.

2.The appellant is the claimant. The first and second respondents are the owner and the insurer of the vehicle respectively.

3.It is the case of the appellant that on 19.04.2005 at about 10:00 a.m when she was walking on Thirumalai Road, near Jones Company the first respondent rode his motor cycle bearing bearing Registration No: TN-22-S-3510 on extreme wrong side and hit the appellant. Due to the impact she sustained grievous injuries. Hence, she filed a claim petition before the Tribunal claiming Rs.8,00,000/- as compensation. The Tribunal after analysing the oral and documentary evidence awarded Rs.5,20,900/- as compensation.

4. Not being satisfied by the award passed by the Tribunal, the appellant/ claimant has come up with this present appeal.

5. Before the Tribunal on the side of the appellant two witnesses were examined viz., P.W.1 and P.W.2 and marked ten documents viz., Ex.P1 to Ex.P10. On the side of the respondent, two witnesses were examined viz., R.W.1 and R.W.2 and five documents were marked viz. Ex.R.1 to Ex.R.5.

6. The learned counsel for the appellant/claimant submitted that even though the Doctor assessed the disability at 35% the Tribunal has taken only 15%. He would further contend that the Tribunal failed to award adequate compensation towards conventional heads. In any event the award passed by the Tribunal is very low when compared to the injuries sustained by the claimant.

7. The learned counsel for the second respondent supported the award and prayed this Court to confirm the award and dismiss this appeal.

8. Despite notice being served to the respondents and their names printed in the cause list there is no representation for the respondents. Hence considering the paucity of time the appeal itself is taken up for final disposal, since the disposal of this case will not affect the first respondent in any manner.

9. Heard both sides and also perused the materials available on record.

10. A perusal of the records, it is seen that the second respondent/ Insurance company has filed a counter affidavit before the Tribunal, submitted that the allegation contained in the claim petition are false. It was also stated that the injured was hit by an auto, which was later corrected as two wheeler, which was not properly attested by competent hospital authorities. Apart from this there is no proof to show that the first respondent's vehicle was insured with this respondent and the driver of the vehicle had valid driving licence at the time of accident.

11. On perusal of the award passed by the Tribunal, it was disputed that i.e. Whether the appellant sustained injuries due to the rash and negligent driving of the first respondent? and the same was discussed elaborately before the Tribunal and finally arrived at a conclusion that the negligent driving of the first respondent is the cause for the accident. R.W.1/Neelamegam, junior Assistant, R.T.O., Redhills was examined and produced Ex.R1/Letter issued by the licensing authority, R.T.O, Redhills stating that there was no driving

licence issued to the first respondent/N. Nagaraj. Then it was clear that the first respondent did not possess valid driving licence at the time of accident. Hence, the Tribunal arrived at a conclusion that as the rider of the vehicle does not possess valid driving licence at the time of accident, the Insurance Company shall pay the compensation amount and recover the same from the owner of the vehicle. This Court is of the view that the finding of the Tribunal with regard to negligent aspect is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

12. With regard to quantum the Tribunal based on the Exs.P.5/Travel Bills and also considering the fact that the claimant was taken 13 days treatment as inpatient awarded Rs.10,000/- each as towards the head Transportation and Extra Nourishment. Considering Ex.P.3, Ex.P.4/Medical bills and Ex.P.7/Estimation for future medical expenses awarded Rs.39,000/- as additional medical expenses. Analysing the medical records it is found that the appellant was treated with Debridement in addition Secondary suturing and reverse sural artery flap and the scar in both the legs left from such surgery which might have made difficult to get a proper marital alliance. Hence Rs.50,000/- is allowed under the head Loss of Matrimonial prospects. Considering the nature of injuries sustained by the appellant Rs.50,000/- and Rs.1,50,000/- is awarded towards the head Mental agony and pain and sufferings. P.W.2/Dr.N. Saichandran examined the injured and assessed disability at 35%, but considering the nature of injuries, the Tribunal has taken only 15% and the applicable multiplier for the age group of 17 is '18' and the same is applied and arrived Rs.1,45,800/- (Rs.4,500x12x18x15%) towards the head permanent disability. Thus, quantified Rs.5,20,900/- as total compensation which is hereby tabulated:

Particulars	Amount
Transportation	Rs.10,000/-
Extra nourishment	Rs.10,000/-
Damage to clothes	Rs.1,000/-
Medical Expenses	Rs.65,100/-
Future Medical Expenses	RS.39,000/-
Mental agony to the appellant	Rs.50,000/-
Loss of matrimonial prospectus	Rs.50,000/-
Permanent disability	Rs.1,45,800/-
Pain and sufferings	Rs.1,50,000/-

Particulars	Amount
Total	Rs.5,20,900/-

This Court is of the view that the finding of the Tribunal with regard to quantum is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

13. In view of the above, this Court do not find any error in the award dated 19.09.2013 passed by the Tribunal in M.C.O.P.No.5787 of 2005 and there is no merit in the appeal. Hence, this Court is not inclined to interfere with the same.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal and recover the same from the owner of the vehicle/first respondent along with interest at the rate of 7.5% per annum, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. There will be no interest for Rs.39,000/- towards Future Medical Expenses. On such deposit being made, the claimant is permitted to withdraw the compensation as awarded by the Tribunal along with interest and costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

1.The Motor Accidents claims Tribunal,
The II Judge, Small Causes Court, Chennai.

2.The Section Officer,
VR Section, High Court, Madras-104.

+1cc to M/s.M.Malar, Advocate SR.13737
+1cc to M/s.K.Poomalai, Advocate SR.13817

C.M.A.No.3343 of 2013

PP(CO)
CB(16/03/2021)