

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2978 of 2014

Savithiri

...Appellant/Claimant

vs.

1.P.Palanisamy

2.United India Insurance Company Limited,
Dharapuram.

...Respondents/
Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.04.2014 made in M.C.O.P.No.40 of 2012 on the file of the Motor Accident Claims Tribunal/Additional District Court No.3, Tharapuram in so far as attributing contributory negligence at 25% as well as award of lesser compensation.

For Appellant : Mr.N.S.Sivakumar

For Respondents : Ms.I.Malar for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant challenging the Award dated 15.04.2014 passed by the Motor Accident Claims Tribunal, Additional District Court No.3, Tharapuram in M.C.OP.No.40 of 2012.

2.Heard Mr.N.S.Sivakumar, learned counsel for the Appellant and Ms.I.Malar, learned counsel for the second respondent.

3.The Appellant/claimant has challenged the impugned Award on the following grounds:

(a)The Tribunal has erroneously fixed the contributory negligence on the part of the Appellant/claimant at 25%.

According to her, only due to the rash and negligent driving by the rider of the motorcycle, the accident had happened and there is no negligence on her part.

(b) The quantum of compensation awarded by the Tribunal under the impugned Award is not a just compensation and it has to be enhanced.

4. The Motor Accident Claims Tribunal under the impugned Award has assessed the total compensation payable to the Appellant/claimant at Rs.1,64,900/- together with interest and cost.

5. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Heads	Awarded by the Tribunal in Rs.
Disability compensation calculated at Rs.2,000/- per percentage of disability	40% x 2,000 = 80,000
Loss of earning during treatment Rs.4,000 x 6 months	24,000
Transport	2,000
Extra nourishment	5,000
Pain and suffering	20,000
Medical expenses	27,900
Future medical expenses	5,000
Damages to clothes	1,000
Total	Rs.1,64,900/-

6. Insofar as the first contention raised by the Appellant/claimant is concerned, without any basis, the Tribunal has come to the conclusion that the Appellant/claimant is also responsible for the cause of accident. In the claim petition, she had pleaded that she was a pedestrian and she crossed the road from the eastern to the western side and after reaching the western side, a motorcycle (insured vehicle) due to the rash and negligent driving by its rider dashed against her which resulted in her sustaining injuries. In the counter statement filed by the second respondent Insurance Company they have also not made any averment as to how the accident had happened.

7. Before the Tribunal, the Appellant/claimant has filed 8 documents which were marked as Exs.P1 to P8 and two witnesses were examined on her side namely, the appellant/claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

8. The Appellant/claimant has taken a consistent stand as seen from the claim petition as well as from the oral evidence adduced by her (PW1) that the sole cause of the accident was only due to the rash and negligent driving by the rider of the motorcycle (insured vehicle). No contra evidence has also been adduced by the respondents before the Tribunal to disprove the contention of the Appellant/claimant. This being the case, the Tribunal without any basis has fixed the contributory negligence against the Appellant/claimant at 25% which in the considered view of this Court is an erroneous finding.

9. Any adjudication with regard to motor accident claims is made based on preponderance of probabilities. In the case on hand, when a consistent plea has been taken by the Appellant/claimant that only due to the rash and negligent driving by the rider of the motorcycle (insured vehicle), the accident had happened and when no contra evidence has been produced by the respondents to disprove the said contention, the Tribunal ought not to have fixed the contributory negligence on the part of the Appellant/claimant also. The FIR Ex.A1 also discloses that only due to the rash and negligent driver by the rider of the insured motorcycle, the accident had happened.

10. For the foregoing reasons, this Court is of the considered view that no contributory negligence ought to have been fixed on the part of the Appellant/claimant by the Tribunal. Accordingly, the findings of contributory negligence at 25% against the Appellant/claimant under the impugned Award has to be necessarily quashed by this Court. Therefore, the first contention raised by the Appellant/claimant is accepted by this Court.

11. The Appellant/claimant has sustained the following grievous injuries:

- (i) Multiple fracture on right leg
- (ii) Left hand wrist
- (iii) Fracture on right tibia
- (iv) Fracture on left shoulder
- (v) Fracture on right leg ankle
- (v) Underwent surgery on right leg - tibia and left wrist by fixing plate and screw and malunited.

12. Insofar as the second contention raised by the Appellant/claimant with regard to the quantum of compensation, this Court discusses the same in the following manner:

(a) The Doctor has assessed the disability of the Appellant/claimant at 42%. However, the Tribunal has reduced the same to 40%. This Court is in agreement with the said finding. However, the Tribunal has erroneously awarded only a meagre disability compensation of Rs.80,000/- calculated at Rs.2,000/- per percentage of disability. The Tribunal ought to have considered the year of the accident and the nature of injuries sustained by the Appellant before assessing the disability compensation. The accident happened in the year 2011. After giving due consideration to the year of the accident and the grievous injuries sustained the Appellant/claimant, this Court enhances the disability compensation to Rs.1,20,000/- calculated at Rs.3,000/- per percentage of disability for the 40% disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal. With regard to the compensation awarded by the Tribunal under various other heads as indicated in fifth paragraph of this judgment, the same is a just compensation and there is no scope for interference.

13. In the result, the appeal is partly allowed by setting aside the findings of the Tribunal fixing 25% contributory negligence on the part of the Appellant/claimant and by also enhancing the compensation from Rs.1,64,900/- to Rs.2,04,900/- in the following manner:

Heads	Awarded by the Tribunal in Rs.	Modified by this Court in Rs.
Disability compensation calculated at Rs.2,000/- per percentage of disability	40% x 2,000 = 80,000	40% x 3,000 = 1,20,000
Loss of earning during treatment Rs.4,000 x 6 months	24,000	24,000
Transport	2,000	2,000
Extra nourishment	5,000	5,000
Pain and suffering	20,000	20,000
Medical expenses	27,900	27,900
Future medical expenses	5,000	5,000

Heads	Awarded by the Tribunal in Rs.	Modified by this Court in Rs.
Damages to clothes	1,000	1,000
Total	Rs.1,64,900/-	Rs.2,04,900/-

14.The second respondent is directed to deposit the modified award amount of Rs.2,04,900/- together with interest at the rate of 7.5% from the date of claim till the date of realization to the credit of M.C.O.P.No.40 of 2012, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Tharapuram, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.40 of 2012 to the bank account of appellant/claimant through RTGS, within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Additional District Juege No.3, Tharapuram.

Copy to :

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.N.S.Sivakumar, Advocate, sr no.30278
+1cc to Mr.T.Ravichandran, Advocate, sr no.30358

C.M.A.No.2978 of 2014

NR(CO)
RMP(27/04/2021)