



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3323 of 2014

Sathyabama

..Appellant/Petitioner

Versus

1. B. Josephraj

2. United India Insurance Company Limited,
Oriental Complex,
77, Arunachala Asari Street,
Salem - 636 001.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 19.11.2012 made in M.C.O.P.No.926 of 2011 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem.

For Appellant : Mr.R.Ezhilarasan

For Respondent-2 : Mr.S.Arun Kumar

For Respondent -1 : No appearance

J U D G M E N T

The claimant before the Claims Tribunal has filed this appeal against the Award and decree in M.C.O.P.No.926 of 2011 dated 19.11.2012 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem, seeking for enhancement of compensation awarded by the Tribunal.

2. The appellant herein is the injured person in the accident, the 1st respondent herein is the owner of the offending vehicle and 2nd respondent is the insurer of the vehicle. For the convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of case briefly are as under:

On 19.06.2010 at about 3.30pm while the



petitioner/appellant herein along with her colleague by name Poongodi were walking near Seeragapadi bus stop towards Sankakiri on the left side of the road, the rider of the bike bearing registration number TN 52 A 2074 driving the aforesaid bike in a rash and negligent manner, dashed on the back side of the petitioner/appellant herein as a result of which she sustained grievous injuries and she was admitted in the hospital for treatment. Due to the injuries sustained in the accident, the petitioner/appellant herein has preferred a claim petition in M.C.O.P. No.926 of 2011 on the file of the Motor Accident Claims Tribunal, (Principal Sub-ordinate Judge,) Salem. After trial, the Tribunal has awarded a sum of Rs.45,000/- (Rupees Forty Five Thousand only) to the petitioner/appellant herein.

4. Being aggrieved by the award, the petitioner/appellant herein has filed the present appeal seeking for enhancement of compensation awarded by the Tribunal.

5. The learned counsel for the appellant would submit that the Tribunal has awarded a meagre amount as compensation without considering the grievous injuries sustained by the petitioner/appellant herein vide Ex.P6, Medical summary. Further, the cause of the accident has been confirmed by the Tribunal that the rider of the bike has driven the same in a rash and negligent manner and dashed the petitioner/appellant herein. In this regard, the rider of the two wheeler was booked under Section 279, 337 I.P.C. and Section r/w. 181, Motor Vehicle Inspector Act, after the offence was admitted by himself and even though the offending vehicle was insured with the 2nd respondent and the policy of the offending vehicle was in existence at the time of accident, the award amount was directed to pay by the 1st respondent herein who is owner of the vehicle, not by the Insurance company. Hence, the award passed by the Tribunal is liable to be set aside and this Court may be pleased to enhance the compensation amount passed by the Tribunal directing the Insurance company to pay the same.

6. On the other hand, the learned counsel for the Insurance company/2nd respondent herein would submit that the Tribunal has rightly awarded the compensation to the petitioner/appellant herein after taking into consideration the entire oral and documentary evidence let by both parties. In view of the violation of insurance policy condition, i.e. the rider of the Bike was not having driving licence at the time of the accident, the Tribunal has rightly come to the conclusion by fixing liability on the 1st respondent herein who is owner of the vehicle to pay the compensation to the petitioner/appellant herein discharging the Insurance Company from fixing liability. Hence, as the Tribunal has rightly passed an award in favour of the petitioner/appellant herein directing the 1st



respondent/owner of the vehicle to pay the compensation to the petitioner/appellant herein, it is needless to interfere with the award passed by the Tribunal.

7. Heard, the learned counsel appearing for both sides and perused the materials available on record.

8. During the trial, on the side of the petitioner, P.W.1 was examined and Ex.P1 to Ex.P8 were marked. On the other side, ie. Insurance Company, R.W.1 was examined and Ex.R1 was marked. As there is no appearance on the side of the 1st respondent who was set ex-parte before this Court as well as before the Tribunal wherein the 1st respondent remained absent.

9. On perusal of the award, it is seen that the Tribunal has rightly awarded the compensation of Rs.45,000/- (Rupees Forty Five Thousand Only) to the petitioner/appellant herein after perusing entire oral and documentary evidence placed before the Tribunal since the petitioner/appellant herein has sustained simple injury and no disability due to injury sustained to her. However, it is to be noted that while passing the award, the Tribunal has fixed notional income of the petitioner/appellant herein as Rs.3,000/- (Rupees Three Thousand Only) per month. But, on arriving compensation under the head of loss of earning to the petitioner/appellant herein during the course of treatment, the petitioner/appellant herein was awarded only a sum of Rs.10,000/- (Rupees Ten Thousand Only) having fixed her notional income as Rs.2000/- (Rupees Two Thousand Only) per month for the loss of job for 5 months instead of Rs.3,000/- (Rupees Three Thousand Only). Hence, a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) is awarded having fixed notional income of the petitioner/appellant herein as Rs.3,000/- (Rupees Three Thousand Only) per month under the head of loss of earning instead of Rs.10,000/- (Rupees Ten Thousand Only) whereas all other heads are confirmed by this Court. In the result, the compensation awarded to the petitioner/appellant herein has been modified as per the details given below:

1. Extra Nourishment	-	Rs. 3,000/-
2. Medical Expenses	-	Rs. 15,000/-
3. Transport to Hospital	-	Rs. 2,000/-
4. Pain & Sufferings	-	Rs. 15,000/-
5. Loss of Earning	-	Rs. 15,000/-
(5 month x 3000/- p.m)		

Rs. 50,000/-

10. Even though it was stated by the Insurance company that since the bike was driven by the rider without licence which has to be considered as violation of policy thereby the Insurance



company is not liable to pay the compensation, it is very settled law that when the Insurance policy was in existence and valid at the time of the accident, the Insurance Company shall pay the compensation awarded by the Tribunal on the basis of pay and recovery, hence, the Insurance company is directed to deposit the compensation amount to the petitioner/appellant herein on behalf of the 1st respondent herein who is owner of the bike under the terms of pay and recovery. In the event of deposit of compensation made by the Insurance company to the petitioner/appellant herein, the compensation amount shall be recovered from the 1st respondent herein who is the owner of the vehicle by the Insurance company through filing execution petition against the 1st respondent/owner of the vehicle.

11. In view of the above, the Insurance company is hereby directed to deposit the modified award amount of Rs.50,000/- (Rupees Fifty Thousand Only) together with interest @ 7.5% p.a. from the date of filing of the petition till the date of realisation to the credit of M.C.O.P. No. 926 of 2011 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Salem, less already deposited if any, within a period of three weeks from the date of receipt of copy of the Judgment.

12. On such deposit, the appellant is permitted to withdraw the modified award amount after filing a formal petition before the concerned Claims Tribunal. The deficit Court fee if any, to be paid immediately.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. Accordingly, the award passed by the Claims Tribunal in M.C.O.P. No.926 of 2011 is modified to that extent. There shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Lbm

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Salem.



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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.11028

+1cc to Mr.R.Ezhilarasan, Advocate, S.R.No.11546

C.M.A.No.3323 of 2014

PVS (CO)
CB(01/09/2021)