

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.3224 OF 2017

AND

C.M.P.NO.20008 OF 2017

United India Insurance Co., Ltd.,
Pinak Galaxy, 1st Floor, Opp. Big Bazar Kapur,
Bawadi Junction, Thane Town,
Maharashtra State, Pincode-400607

...Appellant / 2nd Respondent

Vs.

1.Nathiya
2.Bhagirath Bejesingh Goyat,
G-3, BLDG No.B-44, Indian Cor, Dapode,
Tal Bhiwandi, Thane Town,
Maharashtra State, Pincode-400602

...Respondents / Petitioner, 1st Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.153 of 2014 on 14.07.2017 on the file of the Learned Motor Accident Claims Tribunal (Special Sub Judge), at Krishnagiri-District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.P.Mani (R1)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree passed in M.C.O.P.No.153 of 2014 dated 14.07.2017 on the file of Motor Accident Claims Tribunal (Special Sub Judge), Krishnagiri-District.

2. The claimant, aged 21 years, a student studying M.Sc., first year, met with an accident on 29.10.2013, due to which she sustained grievous injuries. Hence, she filed a claim petition, in M.C.O.P.No.153 of 2014, before the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri-District, seeking compensation for a sum of Rs.10,00,000/-.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the container lorry bearing Registration No.MH.04.EB-1512, belonging to the second respondent and directed the appellant to pay a sum of Rs.6,47,400/- (Rupees Six Lakhs Forty Seven Thousand) as compensation to the first respondent.

4.Questioning the quantum of compensation awarded by the Tribunal in the award dated 14.07.2017 made in M.C.O.P.No.153 of 2014, the appellant-Insurance Company has come out with the present appeal..

5.The learned counsel appearing for the appellant/Insurance Company submitted that though permanent partial disability assessed by the Medical Board is 30%, the claims tribunal, while determining the compensation towards loss of earning power, has taken 30% permanent partial disability as whole body disability and awarded compensation. According to the learned counsel for the appellant, whole body disability should have been taken as 1/3rd of the permanent partial disability assessed by the medical board and therefore the compensation awarded by the claims tribunal towards loss of earning power is high and the same needs to be reduced. He further submitted that as per the law laid down by the Hon'ble Supreme Court in the case of Raj Kumar Versus Ajay Kumar & Another reported in CDJ 2010 SC 1153, partial permanent disability cannot be taken as a whole body disability for determining the compensation and therefore, the amount awarded by the Court below is not proper. He further submitted that the compensation awarded towards other heads are also very high and the same needs to be reduced.

6. On the other hand, the learned counsel for the claimant submitted that claimant was studying M.Sc., first year at the time of accident and due to the serious head injuries suffered by the claimant, she used to get giddiness frequently and so she was not able to continue her studies and left the college. He also produced Transfer Certificate of the claimant which was marked as Ex.P11. He further submitted that if the claimant completed the Post Graduate course, she would have got the good job and charm salary and hence taking into consideration the age of the claimant, at the time of accident, the Tribunal has fixed correct percentage for calculating loss of earning and awarded compensation, which is proper.

7. Heard the learned counsel for the appellant-insurance company and the learned counsel for the first respondent and perused the materials available on record.

8. The claimant was 21 years girl at the time of accident and she was studying in M.S.c first year. A perusal of the discharge summary-Ex.P2 shows that she has suffered the following injuries:

"2x2 cm abrasion outer side of left eye, 4x4 cm. abrasion at left elbow, 2x4 cm. abrasion at left knee and multiple abrasions in both feet, fracture of left lateral malleolus, thin SDH right fronto parietal region, hairline fracture of right parietal bone and that she suffered three simple injuries and one grievous injury in the accident. "

9. Further, a perusal of Ex.P3-C.T.scan report shows the grievous injuries sustained by the claimant. A Perual of Ex.P11- Transfer Certificate obtained from the college of the claimant shows that the Transfer Certificate was issued for the month of April 2014 for the academic year 2013-2014, by which time she was studying in the first year M.S.C. Therefore, it is clear that in the middle of the course, she has obtained Transfer Certificate.

10. The claimant was examined as P.W.1 and she deposed that due to head injuries sustained by her, she was not able to concentrate in her studies and that is the reason, why she was issued Transfer Certificate in the middle of the course.

11. The claimant being a girl, sustained head injuries, due to which she is suffering from constant giddiness and not able to concentrate on the studies and the same will definitely affect her career as well as her marriage.

12. Taking all these into consideration, the Claims Tribunal has taken the disability at 30%. This Court is of the considered view that the Court below should have awarded some higher amount .

13. No doubt, the decision of the Hon'ble Apex Court in the case of Raj Kumar Versus Ajay Kumar & Another reported in CDJ 2010 SC 1153, cannot be disputed. As far as this case is concerned, she sustained head injuries and is not able to perform her work properly and she is also getting giddiness. A perusal of Ex.P11 shows that she was not able to continue her studies. Further, when the Court is awarding compensation, there is no hard and fast rule to take functional disability as 1/3rd on the disability assessed by Doctors. If the disabilities are serious in nature viz., the disability assessed @ 70%, and earning capacity is reduced in toto, the functional disability

can be taken as 100%, for the purpose of determining the loss of income of the injured.

14. In the present case taking all these into consideration and considering the facts and circumstances of the case, the loss of earning was awarded by fixing the 30% as functional disability by the Tribunal. I do not find any fault on the finding of the Court below. There is no perversity in the order passed by the Court below. Hence, there is no substance in this appeal and deserves dismissal.

15. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.6,47,400/- awarded by the Tribunal as compensation to the first respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.153 of 2014 on the file of the Motor Accidents Claims Tribunal, (Special Sub Judge), at Krishnagiri-District. On such deposit, the Tribunal is directed to transfer the entire amount to the first respondent/claimant by way of RTGS within a period of three weeks from the date of deposit or the receipt of Bank details from the claimant or application for withdrawal from the claimant, whichever is later. The claimant is permitted to withdraw the deposited amount. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

// True Copy //

Sub-Assistant Registrar

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To

1.Bhagirath Bejesingh Goyat,
G-3, BLDG No.B-44, Indian Cor, Dapode,
Tal Bhiwandi, Thane Town,
Maharashtra State,
Pincode-400602

2.The Motor Accident Claims Tribunal
(Special Sub Judge),
Krishnagiri District.

3.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.P.Mani, Advocate SR.No.26936

C.M.A.No.3224 of 2017

NMI (CO)
RVM(18/11/2021)