



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.729 OF 2022
AND
C.M.P.NO.5320 OF 2022

The Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
M.T.P.C.O., Legal Department,
No.6, Haddows Road,
Nungambakkam,
Chennai - 6.

... Appellant/2nd Respondent

.Vs.

1. S.Mumtaj

... 1st Respondent/Petitioner

2. M/s.JSM Logistics Private Limited,
Plot No.1 & 1A, Flat No.4A,
4th Street, UR Nagar Extn.,
Anna Nagar West Extension,
Chennai - 600 101.

... 2nd Respondent/1st Respondent

PRAYER:-

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 28.10.2021 passed in M.C.O.P.No.1004 of 2015 by the Motor Accident Claims Tribunal, Special Sub-Judge No.2, Court of Small Causes at Chennai.

For Appellant : Mrs.C.Bhuvanasundari

For Respondents : Mr.K.Surya Narayanan
For R1



JUDGMENT

[Judgment of the Court was delivered
by K.KALYANASUNDARAM, J.]

WEB COPY

Heard Mrs.C.Bhuvanasundari, learned counsel appearing for the appellant/Insurance Company and Mr.K.Surya Narayanan, learned counsel appearing for the first respondent/claimant and perused the materials available on record.

2. This appeal arises out of the award passed by the Motor Accident Claims Tribunal (Special Sub-Judge No.2, Court of Small Causes) Chennai in MCOP No.1004 of 2015 dated 28.10.2021.

3. The brief facts of the case are that the first respondent herein was one of the passengers in a Share Auto bearing Reg.No.AP-03-X-9477 and when she travelled in the said auto on 27.09.2014 at 08.45 hours, it is alleged that a lorry bearing Reg.No.TN-02-AR-8043, which was coming from the opposite direction, came to the wrong side of the road and rammed the Share Auto. In the impact, the first respondent/claimant sustained grievous injuries while some other passengers died. Hence, she filed the claim petition seeking compensation of Rs.50,00,000/-.

4. In the counter filed by the appellant/Insurance Company, manner of the accident and nature of injuries sustained by the claimant were disputed. It is their case that the accident had occurred due to the negligence of the driver of the auto.

5. It appears that totally six claim petitions were filed arising out of the same accident and they were taken up together for joint trial. The claimants examined themselves as P.Ws.1 to 6 and the first respondent gave evidence as P.W.2. She is an injured witness in this case. In support of their oral evidence, First Information Report (Ex.P.1), altered First Information Report (Ex.P.2), Motor Vehicles Inspector's Report (Ex.P.3) and Charge Sheet (Ex.P.4) were filed. On the side of the appellant/Insurance Company, no witness was examined and no document was marked. Disability Certificates were marked as Ex.C.1 and Ex.C2.

6. On appreciation of evidence adduced by the parties, in our considered view, the Tribunal has rightly held that the driver of the lorry was responsible for the accident.

7. The first respondent herein in her evidence, deposed that she was 20 years at the time of accident and she was working as Labour in Juice Factory, thereby, earning Rs.8000/- per month. However, on account of this accident, she became permanently



disabled. Ex.P.28-Discharge Summary shows that the injuries caused to the claimant was diagnosed as "D10 Asia a complete paraplegia secondary to a D12 Fracture Dislocation, complicated urinary track infection - Catheter related Subacute deep vein Thrombosis Anemia of Chronic Disease. The Regional Medical Board, Government Stanley Medical College Hospital, Chennai issued Disability Certificate (Ex.C2) stating that the claimant has suffered permanent disability. Though the learned counsel appearing for the claimant, by placing reliance on the decision reported in 2018(1) TN MAC 550 (DB), argued that the functional disability has to be taken as 100%, the Tribunal fixed the disability as 75%. The Tribunal fixed the income of the injured claimant as Rs.8000/- per month and added 40% towards future prospects. By applying multiplier '18', the Tribunal has awarded Rs.18,14,400/- ($8000 + 3200 = 11200 \times 12 \times 18 \times 75/100$) towards loss of earning capacity. In addition, Rs.50,000/- towards pain and suffering; Rs.10,000/- towards Transportation; Rs.57,767/- towards medical expenses; Rs.10,000/- towards extra nourishment; Rs.21,000/- towards attender charges and Rs.75,000/- towards loss of amenities were awarded. In total, the Tribunal has awarded Rs.20,38,200/-. In our considered view, the award of the Tribunal cannot be said to be on the higher side, hence, the same is confirmed. Interest awarded by the Tribunal is also confirmed.

8. In such view of the matter, the Civil Miscellaneous Appeal fails and the same is dismissed. The appellant/Insurance Company shall deposit the entire award amount together with accrued interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

skn

To

1. The Motor Accident Claims Tribunal,
The Special Sub Judge No.2,
The Court of Small Causes,
Chennai.



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

WEB COPY

+1cc to Mr.K.Surya Narayanan, Advocate, S.R.No.20981

C.M.A.NO.729 OF 2022 AND
C.M.P.NO.5320 OF 2022

SR-II (CO)
PBS/18/05/2022