



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.1885 of 2017

S.Subha Rani

...Appellant/Petitioner

Vs.

1.S.Sudharsan

2.National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 600 002.

..Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.07.2016 made in MCOP.No.4593 of 2013 on the file of the IV Judge, Small Causes Court (Motor Accidents Claims Tribunal) at Chennai.

For Appellant	: Mr.K.Suryanarayanan
For R1	: Ex-parte
For R2	: Mr.P.Sankaranarayanan

J U D G M E N T

This appeal has been filed questioning the award dated 18.07.2016 passed in MCOP.No.4593 of 2013 by the Motor Accidents Claims Tribunal / IV Small Causes Court, Chennai.

2.The appellant, herein was the claimant and was said to have been 36 years at the time of accident and was employed as Associate Professor in Saveetha College of Nursing. It was stated that she was earning a sum of Rs.40,000/- per month. On 08.07.2013 at around 05.30 p.m. in the evening when the appellant was walking on the road at Mugappair East, a motor cycle bearing Registration No.TN-18-V-5608, according to the appellant and also affirmed by the learned Tribunal, being driven in a rash and negligent manner at a great high speed, hit the appellant and she suffered grievous injuries. A FIR



had been registered and the same has been filed as Ex.P1 and a copy of the final report has also produced as Ex.R1 and these two documents had led the learned Tribunal to the conclusion that the accident did occur and that the appellant suffered injuries only owing to the rash and negligent manner in which the aforementioned motor cycle was driven. Thereafter, the Tribunal proceed to determine the compensation to be granted to the appellant herein. That finding of the Tribunal, being a finding on fact is upheld.

3.The appellant had suffered the injuries as communitied fracture of middle 1/3rd of left tibia. The appellant was in hospital for a period of one week and she recovered and she went back to work.

4.For the injuries suffered, she had preferred MCOP.No.4593 of 2013, which as aforesaid, came up for consideration before the IV Judge Small Causes Court, Chennai / Motor Accident Claims Tribunal. By judgment dated 18.07.2016, the Tribunal had granted a total compensation of Rs.3,24,918/- and had rounded it of to Rs.3,25,000/-. The compensation breakup is as follows:

Heads	Amounts
Disability	Rs.1,05,000/-
Pain and Suffering	Rs.30,000/-
Extra Nourishment	Rs.3,500/-
Transport Expenses	Rs.3,500/-
Damages to clothes	Rs.750/-
Attender charges	Rs.1,000/-
Medical expenses	Rs.1,64,668/-
Future Medical expenses	Rs.5,000/-
Loss of Income	Rs.6,500/-
Loss of Amenities	Rs.5,000/-
Total	Rs.3,24,918/-

5.Even before proceeding to examine the compensation granted, learned counsel for the 2nd respondent Mr.P.Sankaranarayanan, pointed out the fact that the driver of the aforementioned motor cycle was a minor at the time when he caused the accident and he did not have any driving license. These are violations of the policy condition under which the 2nd



respondent had issued the insurance policy for the vehicle. Therefore, the Tribunal, had directed that the 2nd respondent should pay the compensation to the appellant herein and thereafter, should recover it from the 1st respondent. That observation and finding by the Tribunal is also not interfered with by me and they will hold.

6. With respect to the compensation which was granted, the doctor who was examined as PW-2 had assessed and had determined the disability suffered was 50%. But the Tribunal had observed that worksheet and guidelines have not been produced and the disability of the whole body had not been determined by PW-2 and therefore, interfered with that and the disability was fixed as 35% by the Tribunal. It is quite natural that some interference is called for with percentage of disability as assessed by the doctor. Unless sufficient evidence is produced to substantiate the same, the Tribunal re-examines the same and normally gives a leverage of 10% this way or that way. In this case, let me also undertake the same exercise, and grant 40% disability to the appellant herein.

7. The Tribunal had also given the quantum at Rs.3,000/- for 1% disability. It is pointed out by Mr. P. Sankaranarayanan, learned counsel for the 2nd respondent that there was revision of Rs.3,000/- only in the year 2015, but around from the year 2013 the normal amount granted was Rs.3,000/-.

8. But, taking into account, naturally, the employment of the appellant as an Associate Professor in the College of Nursing, I would raise that to Rs.4,000/- at 1% disability. This would mean the disability would be Rs.1,60,000/-. To this extent, the award of the Tribunal is interfered with and the compensation amount by the Tribunal granted for disability Rs.1,05,000/- is enhanced to Rs.1,60,000/-.

9. The other heads are not interfered with by me except, loss of income, which had been determined at Rs.6,500/- by the Tribunal. It is also seen that the reason given for such determination was that though the appellant herein had produced Ex.P6, Master's Decree Certificate, to justify her appointment, and work as Associate Professor and also Ex.P7 pay slips, the Tribunal had taken a tangential view stating that the appellant failed to examine the employer. If that is the reason given by the Tribunal, then the Tribunal should have rejected Exs.P6 and P7 and stated that the documents were created for the purpose of trial by the appellant herein. Thankfully, the Tribunal had not gone to that extent.



10. Let me take on record Exs.P6 and P7 as they are and determine the income of the appellant as per the documents and determine it at Rs.40,000/-. Learned counsel for the appellant placed a request that it would be loss of income for two months, but considering the fact that she joined work in one week and had resumed work, grant of loss of income for one month is sufficient in this case. The loss of income is enhanced at Rs.40,000/-. The calculation is as follows:

Heads	Amounts
Disability	Rs.1,60,000/-
Pain and Suffering	Rs.30,000/-
Extra Nourishment	Rs.3,500/-
Transport Expenses	Rs.3,500/-
Damages to clothes	Rs.750/-
Attender charges	Rs.1,000/-
Medical expenses	Rs.1,64,668/-
Future Medical expenses	Rs.5,000/-
Loss of Income	Rs.40,000/-
Loss of Amenities	Rs.5,000/-
Total	Rs.4,13,418/-

The total amount is rounded off to Rs.4,14,000/-.

11. The Civil Miscellaneous Appeal is partly allowed to that extent enhancing the compensation which had been determined as Rs.3,25,000/- to Rs.4,13,418/- rounded off to Rs.4,14,000/-. The other aspects in the order shall remain the same. The Insurance company shall deposit the difference in compensation amount with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To:-

1.The IV Judge

Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.K.Suryanarayanan, Advocate sr 8544

+1 CC to Mr.P.Sankaranarayanan, Advocate sr 9113.

CMA.No.1885 of 2017

SRA(CO)
SP(09/03/2022)