

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2022

Pronounced on : 13.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.634 of 2016

and

C.M.P.(MD)No.6821 of 2016

and

Cros.Obj(MD)No.32 of 2017

C.M.A(MD)No.634 of 2016

The Manager,
National Insurance Company Limited,
Office Address:
No.10, Flat No.101-106-N-1, BMC House,
Cannaught Place,
New Delhi -1.

...Appellant / 2nd respondent

Vs

1.R.Hemamalini

... 1st respondent / petitioner

2.P.Nehru

... 2nd Respondent /1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree dated 09.10.2015, made in MCOP No.93 of 2014 on the file of MACT, Principal Sub Court, Karur.

For Appellant : Mr.A.S.Mathiyalagan
For R1 : Mr.K.Bala Subramani
For R2 : No appearance

PRAYER in Cros.Obj(MD)No.32 of 2017:

R.Hemamalini ... Appellant / 1st respondent / Claimant

Vs

1.The Manager,
National Insurance Company Limited,
Office Address:
No.10, Flat No.101-106-N-1, BMC House,
Cannaught Place,
New Delhi -1.

...1st respondent / Appellant /
2nd respondent

2.P.Nehru ... 2nd Respondent /1st Respondent

PRAYER:

This Cross Objection is filed under Order 41 Rule 22 of IPC to enhance the compensation amount to the claimant in M.C.O.P.No.93 of 2014 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge), Karur.

For Appellant : Mr.K.Balasubramani
For R1 : Mr.A.S.Mathiyalagan
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.93 of 2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Karur. The appellant herein is the second respondent, 1st respondent is the claimant and second respondent is the first respondent in the claim petition. A joint trial was conducted along with another case in M.C.O.P.No.92 of 2014 and a common order was passed by the learned Subordinate Judge, Karur.

2.Brief substance of the claim petition in M.C.O.P.No.93 of 2014, is as follows:

On 24.04.2014, at about 2.00 p.m., while the petitioner was riding a two wheeler bearing registration number TN 47 AC 5276 along the Karur-Salem National Highways in a slow and cautious manner, a Maruti Swift car bearing registration number TN 30 AQ 8766 driven by its driver in a rash and negligent manner, came from the backside of the two wheeler and dashed against the two wheeler. The petitioner sustained injuries. She was admitted in Karur Amaravathi Hospital. She took treatment as inpatient for 17 days.

Due to blood clot in the brain, the left side body paralyzed. The petitioner is undergoing Physiotherapy after the accident. She was working as an Assistant Headmaster in S.K.V Matriculation Higher Secondary School, Tiruchencodu, and she was getting a sum of Rs.25,000/- per month, as salary and after the accident, she cannot continue the job and she requires the help of an assistant to do her day to day works. She prays a sum of Rs.30,00,000/- as compensation.

3.Brief substance of the counter filed by the second respondent in M.C.O.P.No.93 of 2014, is as follows:

The manner of accident narrated in the petition is wrong. It was the rider of the two wheeler who drove the vehicle in a rash and negligent manner. After overtaking, the car suddenly turned to the left side, dashed against the car and invited the accident. The injuries, mode of treatment, monthly income, medical expenses, disability are all denied. The amount and the interest claimed, are excessive.

4.In the joint trial, five witnesses were examined and thirty six documents were marked on the side of the claimants. No witness was

examined and one document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.8,45,542/- as compensation.

5. Against the award, the second respondent filed this Civil Miscellaneous Appeal on the following grounds:

The Tribunal failed to consider that it was the driver of the two wheeler, while trying to overtake the car, came to the middle of the road, dashed against the car and invited the accident. The Tribunal is wrong in fixing the disability at 45% and in fixing the monthly income as 22,450/-. The Tribunal awarded Rs.1,50,000/- towards loss of income, Rs.1,66,725/- for physiotherapy treatment, Rs.1,40,852/- for medical expenses, Rs.30,000/- for extra nourishment, Rs.1,00,000/- towards pain and sufferings, Rs.1,00,000/- towards loss of earning capacity which are all excessive.

6. On the side of the claimant a Cross Objection is filed. Brief substance of the cross objection is as follows:

The Tribunal ought to have fixed the disability at 50% by considering the evidence of P.W.3-Doctor. The Tribunal failed to consider the evidence of P.W.4 and Ex.P.31 to Ex.P.35, to decide the profession and salary of the

claimant and ought to have fixed the monthly income as Rs.25,000/-. 50% ought to have added towards future prospects and the loss of income ought to have calculated by applying multiplier method. The award amount ought to have enhanced to a total sum of Rs.21,00,000/-.

7. On the side of the appellant, it is stated that the accident has taken place only in the extreme left side of the road. Copy of the rough sketch will prove the place of occurrence. In the cross examination of P.W.1/claimant in another claim petition, it is stated that the petitioner was not wearing helmet and she was not having driving license and hence contributory negligence has to be fixed on the claimant. It is further stated that in the Motor Vehicle Inspection report, it was specifically mentioned that driving licence was not produced. Copy of the rough sketch was marked as Ex.P2. The driving licence of the petitioner was not marked as a document on the side of the claimant. On the basis of the evidence of P.W.1 and P.W.2, and on the basis of Ex.P.1 - First Information Report, Ex.P.4 - charge sheet, Ex.P.5- copy of the judgment in S.T.C.No.1921 of 2014, the Tribunal has fixed the liability on the driver of the first respondent vehicle.

8.Considering that the driving licence was not produced and considering the fact that the claimant was not wearing helmet at the time of accident, 20% contributory negligence is fixed on the claimants.

9.On the side of the appellant it is stated that the Tribunal has fixed the disability at 45%, which is excessive. The case diary given by the Amaravathi Hospital, Karur, is marked as Ex.P.12. Discharge summary issued by Kovai Medical Centre Hospital is marked as Ex.P13 and Ex.P14. The Doctor was examined as P.W.3. Disability certificate, CT scan report, X-ray were marked as Ex.P.20 to 30.

10.The Doctor fixed the disability at 60%. The claimant has not undergone any surgery. P.W.3 did not give treatment to the claimant. In view of the same, the Tribunal fixed the disability at 45%, which is reasonable. For 45% disability, the Tribunal has awarded Rs.1,12,500/- as compensation. Considering the date of accident, a sum of Rs.3000/- has to be awarded for each percentage of disability. Hence it is decided that the claimant is entitled to Rs.1,35,000/- (45 x 3000) towards 45% disability.

11.The Tribunal awarded Rs.1,50,000/- towards temporary loss of income and Rs.1,00,000/- towards loss of earning capacity. On the side of the appellant, it is stated that after giving compensation for disability, there is no necessity to grant any compensation for loss of earning capacity. The Assistant Headmaster of the school was examined as P.W.4. He has deposed that the claimant was getting a salary of Rs.22,500/- per month. Bank statement of the deceased was marked as Ex.P.21. Salary certificate were marked as Ex.P.34 and Ex.P.35. P.W.4 has deposed that after the accident, the claimant was terminated from service. The monthly income of the injured claimant, was Rs.22,500/- at the time of accident.

12.Considering the fact that the petitioner has not undergone any surgery. Considering the period of treatment and the period of hospital, it is decided that the petitioner is entitled to Rs.1,35,000/- as temporary loss of income. As already temporary loss of income was calculated, there is no necessity for this Court to again grant compensation for loss of earning capacity.

13.On the side of the appellant it is stated that the Tribunal has awarded Rs.1,66,725/- for physiotherapy treatment. In both the discharge summaries, in Ex.P.13 and Ex.P.14, there is no endorsement recommending physiotherapy treatment.

14.Considering the nature of injuries and considering the evidence of P.W.4, it is decided that the petitioner is entitled to receive compensation for the expenses towards physiotherapy treatment.

15.The Tribunal has awarded Rs.22,450/- towards transport expenses. Rs.30,000/- towards extra nourishment, Rs.5,000/- towards future medical expenses which are all reasonable. The Tribunal awarded Rs.1,00,000/- towards pain and sufferings. Considering the fact that the petitioner has not undergone any surgery, the amount awarded towards pain and sufferings is reduced to Rs.50,000/-.

Temporary loss of income	- Rs.1,35,000/-
For disability	- Rs.1,35,000/-
Medical expenses (As per Ex.P.15)	- Rs. 18,015/-

Medical Expenses (As per Ex.P.16)	- Rs.1,40,852/-
For Physiotherapy treatment	- Rs.1,66,725/-
For Transport Expenses	- Rs. 22,450/-
For Pain and sufferings	- Rs. 50,000/-
Extra nourishment	- Rs. 30,000/-
Future Medical expenses	- Rs. 5,000/-

Total	- Rs.7,03,042/-

16.With the above modification this Civil Miscellaneous Appeal and the Cross Objection are disposed of :

(i) The award of compensation is reduced from Rs.8,45,542/- to Rs.7,03,042/- (Rupees Seven Lakhs Three Thousand and Forty Two only) with interest at the rate of 7.5% per annum.

ii)The appellant /Insurance company, is directed to deposit the entire compensation of Rs.7,03,042/- (Rupees Seven Lakhs Three Thousand and Forty Two only) (if not already deposited) together with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.93 of 2014 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Karur, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the appellant /insurance company, the first respondent herein is permitted to withdraw the entire award amount of Rs.7,03,042/- (Rupees Seven Lakhs Three Thousand and Forty Two only), along with proportionate interest at the rate of 7.5% per annum. Consequently, connected miscellaneous petition is closed.

13.10.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal Principal Sub Court, Karur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.634 of 2016

R. THARANI, J

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