



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

C.M.A. No.1900 of 2018

and

CrI.M.P.No.14613 of 2018

The Oriental Insurance Co. Ltd.
Rep. by its Branch Manager
Dharmapuri

... Appellant

Vs.

1. Palaniammal, W/o.Subramani
(Mentally not at Represented by her husband
and NF Subramani)

2.Raja

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree in MCOP No.2611 of 2013, dated 25.03.2015, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : R1- Notice served (No Appearance)
R2- Not ready in notice



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JUDGMENT

This Civil Miscellaneous Appeal has been by the Insurance Company against the Award and decree passed in MCOP No.2611 of 2013, dated 25.03.2015, on the file of the Special Sub Judge (Motor Accidents Claims Tribunal), Krishnagiri.

2. The 1st respondent herein is the claimant. Before the Tribunal, the appellant/Insurance Company was arrayed as 2nd respondent and the 2nd respondent herein who is the owner of the offending vehicle, was arrayed as 1st respondent.

3. The case of the claimant is that on 24.04.2007, after seeing her daughter at Sanganampatti, she was returning by a mini bus bearing Regn. No.TN-29-E-3567 (wrongly mentioned as TN-29-E-5567 in the FIR) belonging to the 2nd respondent herein and insured with the appellant herein. At about 14.30 hrs., the driver of the mini bus stopped the bus at Naganampatti bus stop. Some of the passengers in the said bus got down from the bus. In the last, when she was getting down from the bus, the driver of the said mini bus, all of a sudden, moved the bus in a rash and negligent



manner, without observing any road traffic rules and also without receiving any signal from the conductor, due to which, she fell down from the bus and sustained injuries. Immediately, she was taken to Government Head Quarters Hospital, Dharmapuri and she was treated for the injuries and FIR was registered by the Karimangalam Police Station against the driver of the said Mini Bus. Subsequently, the claim petition was filed by the claimant before the Tribunal claiming Rs.10,00,000/- as compensation stating that due to the injuries sustained in the accident, she was unable to walk, stand, sit and squat and not able to do the work as before. Further, she was getting chronic pain in the left hip and chronic head ache and also giddiness frequently. Due to the injuries, she has suffered a great mental shock and agony and also suffered permanent disability. The claimant who was a female Coolie in the building construction work, is not able to do any work as before and lost her earning power. She underwent prolonged treatment and had suffered pain and mental agony. In spite of best and continuous treatment, she could not be cured and she is also not mentally sound.

4. In order to substantiate the case of the claimant before the Tribunal, on the side of claimant, two witnesses were examined as P.W.1 and



P.W.2 and 7 documents were marked as Ex.P.1 to Ex.P.7 and no material object was exhibited. On the side of the respondents, no oral or documentary evidence was let in.

5. The 2nd respondent herein/1st respondent who is the owner of the offending vehicle, was set ex-parte before the Tribunal.

6. The Tribunal, after hearing the arguments of the learned counsel for the 1st respondent/injured and the learned counsel for the Insurance Company and considering the oral and documentary evidence, awarded compensation of Rs.7,12,400/-. Challenging the quantum of compensation awarded by the Tribunal, the Insurer of the vehicle/2nd respondent has filed the present appeal before this Court.

7. The learned counsel for the appellant/Insurance Company submitted that the quantum of compensation fixed by the Tribunal does not reflect the "just compensation" and it is exorbitant one. Though the Tribunal has arrived at the quantum of compensation at Rs.7,12,400/-, the Tribunal has not given valid reasons to arrive at such quantum and it is not "just



compensation". Further, though the Doctor has issued the Disability Certificate assessing the disability at 35%, the Tribunal has fixed 70% disability without any valid reason and also without any proper evidence, the Tribunal has applied multiplier method in the injured case which is against the proposition of law and there is no material evidence to show that the injured suffered total permanent disability. In the absence of any total permanent disability, the Tribunal has adopted the multiplier method and also fixed the percentage of disability as 70%. In addition to that, the Tribunal has also awarded under the head "for loss of income for 12 months" which is also without any iota of evidence or materials. Therefore, in any angle, the award passed by the Tribunal does not reflect the "just compensation" and the Tribunal has not given proper reasons as to how the claimant is entitled to the quantum of compensation of Rs.7,12,400/-.

8. Though notice was served on the 1st respondent/claimant and her name is also printed in the cause list, there is no representation for the 1st respondent/claimant.

9. Heard the learned counsel for the appellant/Insurance Company and perused the materials available on record.



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10. The accident is not in dispute and the liability is also not in dispute. The age, avocation and the injuries sustained by the claimant are also not in dispute. The Insurer has filed the present appeal only questioning the quantum of compensation fixed by the Tribunal.

11. As an appellate Court, final Court of fact finding, this Court has to re-appreciate the entire evidence and has to give an independent findings. This Court re-appreciated the entire evidence and also perused the records.

12. A perusal of the records shows that it is admitted by the appellant that the claimant sustained injuries due to the accident. However, the appellant is only questioning the quantum of compensation awarded by the Tribunal and the percentage of disability fixed by the Tribunal. The medical records, including the scan report of the claimant, clearly show that she sustained injuries on her hip and head and she had taken treatment for the same and also underwent a surgery.

13. In the claim petition itself it is stated that due to the accident, the claimant has become mentally retarded and she is not in a position to act



on her own and therefore, the claimant has been represented by her next friend/husband.

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14. The accident is admitted and the injuries sustained by the injured are also not in dispute. The husband of the claimant has stated that due to the injuries sustained in the accident, her wife has become mentally retarded. But the same was not challenged by the appellant/Insurance Company. Though the Doctor who has issued the Disability Certificate assessing the disability at 35%, the Doctor has clearly stated that the claimant is not in a position to act on her own independently without the support of anybody. The husband of the claimant who was examined as P.W.1 has clearly stated that his wife was acting differently. Prior to the accident, she was working as a Coolie in building construction work and looking after the family and subsequent to the accident, she is not in a position to attend the Coolie work and unable to perform her regular household work as before. Further, her behaviour is different and she is very emotional and therefore, she is not doing any work resulting in total loss of income.



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15. Therefore, the Tribunal, considering the said materials and Disability Certificate and Doctor's evidence and also the evidence of P.W.1, has fixed the disability sustained by the claimant as total and permanent, as she is not in a position to do any work as she was doing before the accident and has applied multiplier method to fix the quantum. This Court does not find any perversity in the multiplier method adopted by the Tribunal.

16. Considering the facts and circumstances and the material evidence, this Court independently finds that the claimant is entitled to the compensation amount as awarded by the Tribunal. There is no perversity in the appreciation of evidence by the Tribunal and there is no reason to interfere with the impugned Award passed by the Tribunal. Thus, there is no merit in the appeal and the same is liable to be dismissed.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

25.07.2023

ksa-2

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

C.M.A. No.1900 of 20



1.The Special Sub Judge,
Motor Accidents Claims Tribunal, Krishnagiri.

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



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C.M.A. No.1900 of 2018



P.VELMURUGAN. J.

ksa-2

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