

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 792 of 2015

Yuvarani

... Appellant/Petitioner

Vs.

1. J. Meenakshi

2. M/s. United India Insurance
Company Ltd.,
No. 134, Greams Road,
Chennai - 600 006.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act as against the judgment and decree dated 08.10.2014 passed in M.C.O.P. No. 2832 of 2010 by the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant : Mr.T.G. Ravichandran

For Respondents : Mr.Sankara Narayanan for R2

J U D G M E N T

The claimant is before this Court aggrieved over the quantum of Rs.2,70,000/- awarded as compensation for the injuries sustained by her in the accident, which occurred on 30.04.2009.

2. Heard Mr.T.G. Ravichandran, learned counsel for the appellant and Mr.Sankara Narayanan, learned counsel for the 2nd respondent Insurance Company.

3. It is evident from the records that the claimant sustained multiple injuries, fracture on the right leg and was treated as an in patient from 01.05.2009 to 12.05.2009 in Nichani's Hospital, Royapuram, during which period wound debridement and suturing was done and fracture supported with POP was given and interlocking nailing of

right tibia was advised. Thereafter, from 12.05.2009 to 05.06.2009, the claimant was treated as an in patient at Apollo Hospital wherein conservative treatment was given for Grade I compound fracture of right tibia with severe circumferential raw area of both right leg and left knee. P.W.2, Doctor, taking note of malunion of fracture in right tibia, fixation and removal of IL nail, muscle loss in right leg and fibrosis muscles, reduction in muscle power, knee flexion and ankle movement, difficulty in squatting on the floor and in walking fast, assessed the disability at 65%. However, the Tribunal, fixed the disability at 55%. When medical records speak about the disability suffered by the claimant, which was assessed at 65%, the Tribunal should not have reduced the percentage of disability to 55%, in the absence of any contra evidence. Hence, the percentage of disability sustained by the claimant is re-fixed at 65% and instead of Rs.2000/- per percentage of disability, a sum of Rs.3000/- is awarded per percentage of disability, which works up to Rs.1,95,000/-. Therefore, a sum of Rs.1,95,000/- is awarded towards "Disability". The sum of Rs.5000/- awarded towards "Transportation Charges" and "Damage to Clothes" is too low and the same is enhanced to Rs.20,000/-. The amount of Rs.25,000/- awarded towards "Extra Nourishment", Rs.10,000/- awarded towards "Attendant Charges" and Rs.25,000/- awarded towards "Loss of Amenities" are reasonable and they are confirmed. As far as "Pain and Suffering" is concerned, the amount of Rs.25,000/- awarded under the said head is too low, considering the nature of injuries sustained by the claimant and the said amount is enhanced to Rs.50,000/-. The photographs of the claimant would, undoubtedly, prove the disfigurement of both legs. With this disfigurement on both legs, it is highly impossible for the claimant to get married. To put it in other words, the chances of the claimant getting married are very bleak. Therefore, Rs.10,000/- awarded towards "Compensation for Disfigurement of both legs" is enhanced to Rs.1,00,000/-, which is inclusive of "Loss of Marital Prospects". The sum of Rs.60,000/- awarded towards "Medical Expenses" is without inclusion of Rs.13,876/- paid by the claimant as per Ex-P16. Therefore, towards "Medical Expenses", over and above the sum of Rs.60,000/-, a sum of Rs.13,876/- is also awarded. Hence, the total compensation payable to the claimant is calculated thus:

- | | | |
|---|----|---------------|
| 1. Transportation Charges and Damage to Clothes | :: | Rs. 20,000/- |
| 2. Extra Nourishment | :: | Rs. 25,000/- |
| 3. Attendant Charges | :: | Rs. 10,000/- |
| 4. Loss of Amenities | :: | Rs. 25,000/- |
| 5. Medical Expenses | :: | Rs. 73,876/- |
| 6. Pain and Suffering | :: | Rs. 50,000/- |
| 7. Compensation for Disability at 65% | | |
| @ Rs.3000/- per percentage | :: | Rs.1,95,000/- |

8. Compensation for disfigurement of
of both legs :: Rs.1,00,000/-

Total Compensation :: Rs.4,98,876/-
rounded off to Rs.5 lakhs

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The claimant shall pay the additional court-fee for the enhanced amount, if any. Further, it is made clear that the claimant will not be entitled to any interest for the default period from 09.11.2011 to 17.07.2013, as observed by the Tribunal.

4. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a /copy of this order. On such deposit being made, the appellant/.claimant is entitled to withdraw the entire amount within a period of one week thereafter.

5. The Civil Miscellaneous appeal is partly allowed and the award passed by the Tribunal, to the tune of Rs.2,70,000/- is enhanced to Rs.5 lakhs together with interest @ 7.5% per annum. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No.27382

UG(CO)
CA(23/06/2015)

C.M.A.No. 792 of 2015