

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

C.M.A. NO.2970 OF 2007

Kamala

... Appellant/Claimant

Versus

1. T.Vijaya Raja

2. Ramanathan

3. The United India Insurance Company Ltd.,
Represented by its Branch Manager,
Mayiladuthurai. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P.No.122 of 2004 dated 21.07.2006 on the file of the Motor Accident Claims Tribunal, Karaikal.

For Appellant : Mr.R.Thirugnanam

For Respondent - 1 : Exparte

For Respondent - 2 : M/s.S.Jothivani

For Respondent - 3 : Mr.S.Arunkumar
for D.Bhaskaran

J U D G M E N T

The claimant is the appellant. She moved the Motor Accident Claims Tribunal at Karaikal, in M.A.C.T.O.P.No.122 of 2004 claiming a compensation in a sum of Rs.4,00,000/- for the grievous injuries sustained by her in a motor accident involving the motor cycle. The Tribunal awarded a sum of Rs.24,646/-. The

injured/claimant filed the present appeal seeking enhancement of the compensation.

2.It is the case of injury. According to the claimant, on 26.04.2002, at about 7.15 hours, she was proceeding in motor cycle as pillion rider, which was driven by her husband Ramadoss, bearing Registration No.PY-02-3772 from Puliyan Kottai Salai on left side of the road, from west to east direction and when she was nearing MGJ Complex, a TVS Suzuki bearing Registration No.TN-51-W-7585, driven by the 1st respondent in a rash and negligent manner in the same direction and dashed against motor cycle. In the impact of the accident, the claimant was thrown out of the vehicle.

3.In the accident, the claimant had sustained grievous injury on her spinal cord and her husband sustained serious injury over his hip. The claimant was taken to the General Hospital, Karaikal and then referred to the Government Hospital, Pondicherry. However, there are no sufficient facilities to treat for the injury on spinal cord and in order to have a better treatment, she got admitted at Apollo Specialty Hospital, Chennai.

4.On examination of the claimant, the Doctor found that there is serious fracture on her spinal cord. The claimant had undergone a major operation. Claiming that the injuries suffered by her in the accident had resulted in 52% disability, the claimant moved the Tribunal seeking compensation of a sum of Rs.4,00,000/- from the first respondent, who drove the two wheeler and the second respondent being the owner of the two wheeler and the third respondent being the insurer of the said vehicle.

5.Before the Tribunal, the claimant examined herself as P.W.1 and examined the Doctor, who treated her as P.W.2. The claimant had also marked A.1 to A.18 as exhibits. The respondents have filed Ex.B-1 and examined one witness / T.Deivanayagam as R.W.1.

6.On a perusal of the entire materials and the evidence brought on record, the Tribunal came to the conclusion that the accident had occurred solely due to the negligent act of the first respondent and therefore, the respondents 2 and 3 are liable to pay the compensation to the claimant. Though the claimant had claimed a sum of Rs.4,00,000/- as compensation, the

Tribunal taking into consideration various aspects, had fixed a sum of Rs.24,646/- as compensation payable to the claimant with interests at the rate of 7.5%. Challenging the same, the claimant had preferred the present appeal.

7.Learned counsel appearing for the appellant would submit that even though the claimant has suffered grievous injury on her spinal cord and the Doctor P.W.2 has given the medical certificate assessing the disability at 52%, the Tribunal has awarded only a sum of Rs.5,000/- towards the disability. He would further submit that the appellant is a Staff Nurse by profession and due to the accident, she could not continue her job because of the serious fracture suffered by her and without an attender she cannot even attend to her nature calls. Though the claimant had claimed a sum of Rs.4,00,000/- as compensation, the Tribunal has awarded only a meager sum of Rs.24,646/-. Accordingly, she would pray for enhancement of the same.

8.Learned Counsel appearing for the third respondent/Insurance Company would submit that the Court below, after taking into consideration the entire medical records and also the documents produced on the side of the claimant, fixed the disability at 52% and awarded a sum of Rs.24,646/- warranting no interference in this appeal.

9.Heard both sides and perused the records.

10.On a careful perusal of the judgment passed by the Court below, it is seen that the court below had awarded a total compensation of Rs.24,646/- under the following heads;

1. Disability	-	Rs. 5,000/-
2. Medical Expenses	-	Rs. 4,800/-
3. Transport Charges	-	Rs. 3,846/-
4. Pain and Suffering	-	Rs. 5,000/-
5. For Extra Nourishment	-	Rs. 5,000/-
6. Damages to Clothes	-	Rs. 1,000/-

Total Rs.24,646/-

11.On a reading of the judgment of the Tribunal it is seen that though the Tribunal had accepted the contention of the claimant that she had suffered 52% disability, it has chosen to award only a sum of Rs.5,000/- towards disability. The injuries

suffered by the claimant viz. grievous fracture on her spinal cord, has been spoken to by the Doctor / P.W.2, the respondents have not disputed the injuries suffered by the claimant. In such circumstances, this Court feels it appropriate to grant a total sum of Rs.1,00,000/- towards disability. Similarly, for the fractures and multiple injuries suffered by the claimant, the sum granted by the Tribunal towards Pain and Suffering, being a sum of Rs.5,000/- is very low. Therefore, this Court feels that a further sum of Rs.50,000/- may be granted to the claimant under the head Pain and Suffering. The claimant has produced medical bills to the tune of Rs.4,800/-, the Tribunal had awarded the said sum towards Medical Expenses that is confirmed. Under the head Transport Charges, the Tribunal has granted a sum of Rs.3,846/-. It is seen that the claimant is the resident of Karaikal was first admitted at General Hospital, Karaikal and then referred to Government Hospital, Pondicherry and thereafter, she has been admitted at Apollo Specialty Hospital, Chennai. This shows that the claimant had travelled with her injury to quite a distance. Therefore, this Court feels that by adding a sum of Rs.11,154/- towards Transport Charges incurred by the claimant, the total Transport Charges is enhanced to a sum of Rs.15,000/-. For Extra Nourishment, the Tribunal has awarded a sum of Rs.5,000/-, since the claimant had suffered spinal cord injury, I am of the opinion that the sum awarded towards Extra Nourishment can be enhanced to a sum of Rs.10,000/- and accordingly, it is enhanced. The Tribunal has awarded to a sum of Rs.1,000/- towards Damages to Clothes, the same is confirmed. Lastly, a perusal of the materials placed before this Court reveals that the claimant had suffered an injury in the spinal cord, which left her with 52% disability the avocation of the claimant is said to be that of a staff nurse working with the Government of Pondicherry. It is also on record that because of the injury suffered in the accident, the claimant is completely dependent by someone even to attend to her nature calls. This weighs that this Court to grant some amount towards Attendant Charges. By way of enhancing the compensation to a total sum of Rs.20,000/-, this Court feels it appropriate to grant a sum of Rs.19,200/- to the claimant towards Attendant Charges.

12. Accordingly, this appeal stands allowed, by enhancing the compensation to a sum of Rs.2,00,000/- under the following heads;

1. Disability	-	Rs.1,00,000/-
2. Medical Expenses	-	Rs. 4,800/-
3. Transport Charges	-	Rs. 15,000/-
4. Pain and Suffering	-	Rs. 50,000/-
5. For Extra Nourishment	-	Rs. 10,000/-
6. Damages to Clothes	-	Rs. 1,000/-
7. Attendant Charges	-	Rs. 19,200/-
Total		Rs.2,00,000/-

13.The respondents are directed to deposit the entire award amount of Rs.2,00,000/-[Rupees Two Lakhs only] including the enhanced sum, if not already deposited along with accrued interest, to the credit of M.A.C.T.O.P.No.122 of 2004 dated 21.07.2006 on the file of the Motor Accident Claims Tribunal, Karaikal, within a period of four weeks from the date of receipt of a copy of this order. It is needless to state that on such deposit being made, the claimant is entitled to withdraw the same. No costs.

14.At this juncture, it is submitted by the learned counsel for the Insurance Company that the vehicle was driven by the driver without any valid licence and therefore, the owner of the vehicle is responsible for the same. Hence, the Insurance Company is directed to pay the entire award amount to the claimant and liberty is granted to the Insurance Company to recover the same from the second respondent, being the owner of the vehicle.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Motor Vehicles Accident Claims Tribunal,
Karaikal.

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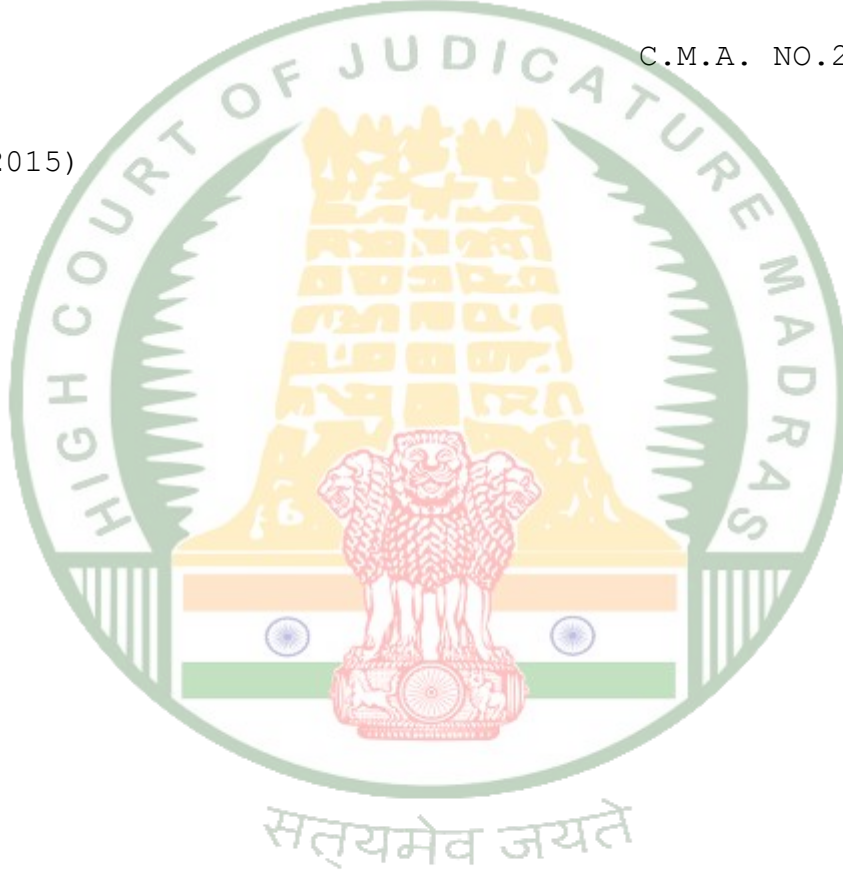
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The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.58859
+1cc to M/s.S.Jothivani, Advocate, S.R.No.58912
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.58892

C.M.A. NO.2970 OF 2007

PA(CO)
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