

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. NO. 1999 OF 2014

The Regional Manager
New India Assurance Co. Ltd.
No.45, Moore Street, Chennai - 1. ... Appellant/2nd Respondent

- Vs -

1. Gowri .../Petitioner
2. M/s.Parveen Travels Pvt. Ltd.
No.1156, Santhavellore Village
Sunguvarchathram
Sriperumbudur Taluk
Kanchipuram District. ... Respondents/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2015, passed by the Motor Accidents Claims Tribunal Small Causes Court No.II, Chennai, made in MCOP No.7083 of 2013.

For Appellant : Ms. S.R.Sumathy

For Respondents: Mr. M.Selvam for R-1

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent/claimant.

2. The appellant/insurer of the vehicle has filed the appeal challenging the award dated 27.01.2015, passed by the Small Causes Court No.II, Chennai, made in MCOP No.7083 of 2013.

3. On 10.09.2013, at about 06.45 hours, when the claimant Gowri, aged about 33 years was travelling in her bicycle in the 200 feet radial road, at the junction of Viduthalai Nagar, the bus, belonging to the second respondent, bearing Regn. No.TN-21-

AU-1326, driven by its driver in a rash and negligent manner, hit the claimant due to which the claimant sustained severe head injuries and was pushed into a deep vegetative state. A case was registered against the driver of the bus in Crime No.1151/13 by the Mount Traffic Investigation.

4. The claimant, at the time of accident, was working as House maid and was earning a sum of Rs.10,000/= per month. The first respondent/claimant, for the injuries suffered, filed the claim petition claiming a sum of Rs.60,00,000/= as compensation.

5. In support of the claim, the husband of the claimant examined himself as P.W.1 as the claimant could not be examined, besides one Dakshinamoorthy, as P.W.2, who is an eye witness to the occurrence, one S.Girish as P.W.3, in whose house the claimant was employed and Dr.J.R.R.Thiagarajan, who treated the claimant was examined as P.W.4 and Exs.P-1 to P-15 were marked, the details of which are as follows:-

Ex.P-1	- Attested copy of FIR in Cr. No.1151/2013 at Mount Traffic Investigation
Ex.P-2	- Discharge Summary
Ex.P-3	- Discharge Summary
Ex.P-4	- Out-Patient chit
Ex.P-5	- Medical Bills
Ex.P-6	- Scan Report
Ex.P-7	- Copy of Continuous Treatment Book
Ex.P-8	- Copy of Continuous Treatment Book
Ex.P-9	- Food Feeding Book
Ex.P-10	- Copy of Charge sheet
Ex.P-11	- Advance receipts
Ex.P-12	- Photos with CD of the claimant
Ex.P-13	- Disability Certificate
Ex.P-14	- C.T. Scan Film
Ex.P-15	- X-ray film

6. On the side of the respondents, neither any witness was examined nor any document was marked.

7. The Tribunal based on the oral evidence of the P.W.1, the F.I.R. and also taking into account the evidence of P.W.2, an eye witness to the occurrence, which has been adduced to prove that the bus was driven in a rash and negligent manner and also taking note of the evidence of P.W.4, the doctor, who was examined to prove the disability suffered by the claimant, coupled with the documentary evidence and further there being no evidence adduced on behalf of the appellant to refute the testimony of the prosecution witnesses as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the van and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Loss of income for 12 months	-	Rs.84,000/=
Transportation	-	Rs.25,000/=
Extra Nourishment	-	Rs.30,000/=
Damage to clothes	-	Rs.1,000/=
Medical Expenses	-	Rs.50,000/=
Future Medical Expenses	-	Rs.1,00,000/=
Attender Charges	-	Rs.35,000/=
Mental Agony to the petitioner	-	Rs.40,000/=
Loss of amenities of life	-	Rs.50,000/=
Pain & Suffering	-	Rs.75,000/=
Disability & Loss of Earning Power (Rs.7,000 X 12 X 11 * 75%)	-	Rs.10,08,000/=
Total Compensation	-	Rs.14,98,000/=

8. In all the Tribunal awarded a compensation of Rs.14,98,000/= with interest at the rate of 7.5% from the date of claim petition till date of payment/deposit. Aggrieved by the said award, the insurer of the vehicle is before this Court by filing this appeal.

9. Learned counsel appearing for the appellant submitted that the income of the deceased has not been properly substantiated with documentary evidence and, therefore, fixing Rs.7,000/= as income of the deceased is not sustainable.

10. Per contra, learned counsel appearing for the claimants submitted that the Tribunal has analysed the evidence threadbare and on the basis of the oral evidence of the employer, fixed the income and the same cannot be faulted. Further, it is submitted

that the compensation awarded on the other heads are on the lower side and this Court may consider enhancing the same.

11. This Court has given its careful consideration to the above contention advanced by the learned counsel for the appellant. The Tribunal has fixed the income of the claimant at Rs.7,000/= based on the evidence of P.W.3, who had employed the claimant as house maid. Though P.W.3 has given evidence that the claimant was earning Rs.10,000/= per month, the Tribunal, taking into consideration the overall scenario, has fixed the income at Rs.7,000/=:, which, in the considered opinion of this Court is fair and reasonable and cannot be found fault with.

12. On the question of compensation on various heads, on a careful perusal of the evidence on record, this Court finds that through the medical evidence as also the oral evidence of P.W.4, the doctor, the claimant has proved her disability. P.W.4 has fixed the disability at 100% partial permanent disability, and the Tribunal on consideration of the same, has fixed the total permanent disability at 75%, as the injuries suffered by her affects her normal life and profession and hampers her livelihood. A perusal of Ex.P-3, discharge summary reveals that the patient has taken treatment as in-patient at Rajiv Gandhi Government General Hospital from 10.9.13 to 9.10.13 for a period of 29 days. Further the claimant had suffered injuries to the vertebra, ribs and cervical collar. Further Tracheostomy was also done for tracheal toilettings and the claimant was on ventilator support. On an overall consideration of the medical evidence, coupled with the oral evidence of the doctor, P.W.4, this Court is of the considered opinion that the compensation awarded by the Tribunal towards disability and loss of earning power cannot be said to be excessive. In the above circumstances, this Court finds no reason to interfere with the award passed by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order passed by the Tribunal. This Court, by order dated 23.09.2015 directed the appellant to deposit the entire award amount and thereafter, by order dated 06.11.2015, this Court permitted the claimants to withdraw 50% of the deposited amount. The claimants are permitted to withdraw the balance amount lying in deposit. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

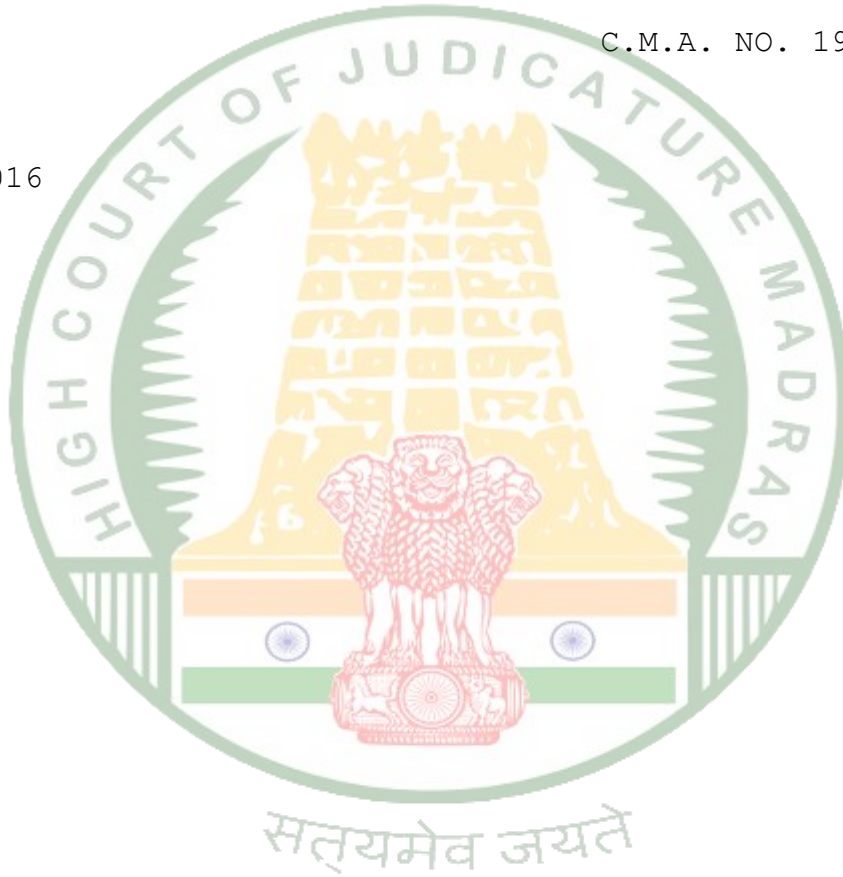
To

The Judge,
Motor Accident Claims Tribunal
II Small Causes Court
Chennai.

+1 cc to Ms.S.R.Sumathy Advocate sr.15186
+1 cc to Mr.M.Selvam, Advocate sr.15173

C.M.A. NO. 1999 OF 2015

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