

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2016

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THE HONOURABLE MR. JUSTICE T. RAJA

C.M.A. No.410 of 2010

Myli

.. Appellant/Claimant

versus

1.K.Kanagasabai

2.The Branch Manager,  
The National Insurance Co. Ltd.,  
Nethaji Road, Manjakuppam,  
Cuddalore-1.

.. Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27.10.2009 made in M.C.O.P. No.790 of 2002 on the file of the Motor Accident Claims Tribunal, (Additional District Judge, Fast Track Court No.2), Cuddalore.

For appellant : Mr.S.Kalyanaraman

For respondents: R1 exparte before Tribunal

Mr.J.Chandran for R2

JUDGMENT

The appeal is preferred by the claimant against the judgment and decree dated 27.10.2009 made in M.C.O.P. No.790 of 2002 on the file of the Motor Accident Claims Tribunal, (Additional District Judge, Fast Track Court No.2), Cuddalore.

2. Background facts in a nutshell are as follows:

On 23.08.1994 at about 06.30 p.m., while the injured claimant was standing in front of Bhavani Ammal Lorry booking office on Eastern portion of Chidambaram Main Road, near Salakarfa, for the purpose of purchasing rice, along with her husband, a scooter, bearing Registration No.PY 01-B 2596 Bajaji Chtettack, belonging to the first respondent and driven by its driver, came rashly from Southern direction and hit against the claimant, whereby the claimant sustained grievous injuries. Immediately after the accident, the claimant was taken to Government Head Quarters Hospital, Cuddalore and then referred to General Hospital, Madras. She was treated upto 16.09.1994 as

an in-patient and undergoing treatment as an outpatient till this date. She claimed a sum of Rs.4,00,000/- as compensation.

3.After considering the oral and documentary evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving by the driver of the scooter and further held that both the respondents (owner and insurer of the vehicle) are jointly and severally liable to pay the compensation and awarded a compensation of Rs.60,500/- with interest at 7.5% per annum from the date of petition and the details of the same are as under:-

|                                  |             |
|----------------------------------|-------------|
| Loss of income due to disability | Rs.52,500/- |
| Pain and suffering               | Rs. 5,000/- |
| Extra nourishment                | Rs. 2,000/- |
| Transport charges                | Rs. 1,000/- |
|                                  | -----       |
| Total                            | Rs.60,500/- |
|                                  | -----       |

Aggrieved by that award, the claimant has filed the present appeal for enhancement.

4.Learned counsel appearing for the claimant-appellant submitted that the compensation awarded by the Tribunal is low and meagre. It is further submitted that the Tribunal ought to have awarded compensation as claimed by the claimant and the Tribunal has not followed the principles of assessment before passing the award. Therefore, it is a fit case for enhancement, he pleaded.

5.Learned counsel appearing for the second respondent/ Insurance Company submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the order of the Tribunal is in accordance with law and the same has to be confirmed.

6.Heard Mr.S.Kalyanaraman, learned counsel appearing for the appellant/claimant and Mr.J.Chandran, learned counsel appearing for the second respondent. On the side of the claimant, P.Ws.1 to 3 were examined and documents Exs.P1 to P10 were marked. On the side of the respondents, R.W.1 was examined and no documents were marked to substantiate their claim.

7.At the time of accident, the claimant was aged about 27 years. She was self employed and also deriving income at Rs.100/- per day as a Rope maker. PW1-claimant stated in her evidence that while she was standing in front of Bhavani Ammal Lorry booking office on Eastern portion of Chidambaram Main Road, for the purpose of purchasing rice, along with her

husband, the scooter, bearing Registration No.PY 01-B 2596 Bajaji Chtettack, owned by the first respondent, driven by its driver, came at high speed from Southern direction and hit against the claimant, whereby she sustained grievous injuries. Immediately after the accident, she was taken to Government Head Quarters Hospital, Cuddalore, where she was referred to the General Hospital, Madras. She was treated upto 16.09.1994 as an in-patient and undergoing treatment as an outpatient till this date. Immediately, a complaint was lodged before the Cuddalore OT Police Station and a case in Crime No.569 of 1994 was registered as against the driver of the scooter. She further deposed that due to dislocation of tempero mandicular joint, head injury, injuries on left elbow and multiple injuries all over the body, she was suffering from mental retardness and she could not do any work by way of left hand very often and she was also suffering from head ache, giddiness and often would faint. PW2/Dr.Vasudevan, who examined the claimant and issued Ex.P7/Disability Certificate on 30.09.2004, has deposed that due to the accident, the claimant sustained multiple injuries and he assessed the disability at 35%. P.W.3/Dr.Chandran, who examined the claimant and issued Ex.P9/ Disability Certificate on 05.10.2004, has deposed that due to the accident, the claimant sustained multiple injuries and he assessed the disability at 20%.

8.After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.52,500/- towards 35% permanent disability on the basis of percentage method, by fixing Rs.1,500/- for each percentage of disability. Normally, the Courts award Rs.1,000/- to 2,000/- for each percentage of disability. Considering the facts and circumstances of the case and evidence available on record, this Court finds it reasonable to award a sum of Rs.70,000/- towards 35% permanent disability, by fixing per percentage of disability at Rs.2,000/-. Therefore, a sum of Rs.70,000/- (Rs.2000X35%) is awarded towards disability as against Rs.52,500/- awarded by the Tribunal. Further, the Tribunal awarded Rs.5,000/- towards pain and suffering, which is considered to be very meagre amount, as per the contention of the learned counsel for the claimant/appellant. After considering the nature of injury sustained by the claimant, it is reasonable to award Rs.7,500/- towards pain and suffering, as against Rs.5,000/- awarded by the Tribunal and the same is hereby awarded. Further, the Tribunal awarded a sum of Rs.2,000/- towards extra nourishment and a sum of Rs.1,000/- towards transport expenses. This Court finds it reasonable to confirm the same and the same is confirmed. In all the claimant is entitled for a sum of Rs.80,500/- as the total compensation with interest at 7.5% per annum.

9. The respondents are directed to deposit the entire compensation amount including the enhanced amount, after deducting the amount that has already been deposited by them, with proportionate interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same, on making proper application before the Tribunal.

10. It is made clear that the respondents are jointly and severally liable to pay the above said compensation to the claimant, as ordered by the Tribunal.

11. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal,  
(Additional District Judge,  
Fast Track Court No.2), Cuddalore

+1cc to M/S.S.Kalyanaraman, Advocate sr.3480

+1cc to Mr.J.Chandran, Advocate sr.3567

C.M.A. No.410 of 2010

ad(CO)  
srg(05/05/2016)

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