

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.577 of 2010 and C.M.A.No.631 of 2011

C.M.A.No.577 of 2010:

R.Gomathi

(Originally Minor declared of Major

as per order dated 19/6/08

in M.P.No.2346/08 rep by her

father and next friend

R.Kannaiyan @ Rajendran)

... Appellant/Petitioner

vs.

1. S.Janarthanan

2. United India Insurance Co. Ltd.,

Motor Third Party Claims Office,

38, Anna Salai, Chennai - 2.

Now HUB, Sillingi Buildings No.134,

Greens Road, Chennai-6.

... Respondents/Respondents

(1st respondent set exparte before Lower Court)

C.M.A.No.631 of 2011

M/s. United India Insurance Co. Ltd.,

Motor Third Party Claim Office,

38, Anna Salai, Chennai - 2.

... Appellant/2nd Respondent

vs.

1. Gomathi

...1st Respondent/Petitioner

2. S.Janarthanan

... 2nd Respondent/1st Respondent

(2nd respondent set exparte before Lower Court)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.07.2009 made in M.C.O.P.No.1251 of 2002 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant in C.M.A.No.577/2010
& 1st Respondent in C.M.A.No.631/2010 : Ms.A.Jothi

For 1st Respondent in C.M.A.No.577/2010
& Appellant in C.M.A.No.631/2010 : Mr.N.Vijayaraghavan

C O M M O N J U D G M E N T

Seeking enhancement of compensation, the injured claimant has come up with C.M.A.No.577 of 2010 and questioning their liability to compensate the claimant, the Insurance Company has come up with C.M.A.No.631 of 2011.

2. Since the facts and issue involved in both these Appeals are one and the same, the Appeals are taken up for disposal by a common judgment.

3. On 25.09.2001, about 6.30 p.m., when the claimant was standing on the eastern end of GST Road, near Pallav Hotel, Pallavaram, Chennai, a Lorry bearing Registration No.TN 09-F-7036, which was proceeding from Chennai towards Tambaram, came in a rash and negligent manner and dashed against the claimant, due to which, he sustained grievous injuries. For the injuries suffered, the claimant filed a Claim Petition before the Tribunal seeking a sum of Rs.6,00,000/- as compensation.

4. On consideration of the oral and documentary evidence, the Tribunal held that the driver of the Lorry is responsible for the accident and awarded a sum of Rs.1,55,400/- as compensation to the claimants. Break-up details of the award are as follows:

Heads	Award Amount
Transportation	Rs. 5,000.00
Extra nourishment	Rs. 10,000.00

Heads	Award Amount
Damages to Dress	Rs. 400.00
Medical Expenses	Rs. 10,000.00
Education	Rs. 5,000.00
Loss of marital prospects	Rs. 10,000.00
Loss of parent's income during treatment	Rs. 10,000.00
Pain and suffering	Rs. 25,000.00
Disability	Rs. 80,000.00
Total	Rs. 1,55,400.00

5. Learned counsel appearing for the claimant contended that the Tribunal failed to note that the claimant sustained multiple grievous injuries and erred in granting low sums for transport, medical expenses and loss of marriage prospects.

6. Per contra, learned counsel appearing for the Insurance Company contended that the Tribunal failed to appreciate that the Driver of the vehicle had been substituted to cover up the fact that Cleaner without licence was driving the vehicle. According to him, the Tribunal ought to have held that the vehicle was driven without valid licence and therefore the Insurance Company had no liability to compensate the claimant.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. Though it is the contention of the Insurance Company that the Driver, who drove the Lorry did not possess valid Driving Licence at the time of accident, nowhere in the Investigation Report, it is stated so. Hence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the Lorry and fixed the liability to compensate the claimant on the Insurance Company and this Court finds no reason to interfere with the same.

9. Coming to the compensation awarded to the claimant, it is seen that for the injuries suffered by the claimant, who was a minor at the time of accident, the Tribunal has awarded only a sum of Rs.1,55,400/-. From the records, it is seen that the claimant had suffered shaft of right femur with Grade IIIA compound fracture of both bones in the left leg and she underwent treatment as inpatient from 25.09.2001 to 31.10.2001, from 08.01.2002 to 30.01.2002 and from 02.05.2002 to 27.07.2002 at Government General Hospital, Chennai. P.W.2-Doctor, who examined the claimant assessed her permanent disability at 80% and the Tribunal has awarded only a sum of Rs.80,000/- towards the same.

10. Taking note of the injuries sustained by the claimant and as the claimant had undergone treatment as an inpatient for a long period of time, this Court feels it appropriate to enhance the compensation under the following heads:

Heads	Enhanced Award
Transportation	Rs. 15,000.00
Extra nourishment	Rs. 15,000.00
Education	Rs. 10,000.00
Loss of marital prospects	Rs. 20,000.00
Loss of parent's income during treatment	Rs. 15,000.00
Pain and suffering	Rs. 50,000.00
Disability (Rs.2,000/- for 80%)	Rs. 1,60,000.00

The compensation awarded towards 'Medical Expenses' and 'Damages to Dress' are confirmed as such. As no amount is awarded by the Tribunal towards 'Loss of amenities', this Court awards a sum of Rs.20,000/- towards the same.

11. In fine, the compensation awarded by the Tribunal is enhanced and the claimant is entitled to a sum of Rs.3,15,400/- (Rupees Three Lakhs Fifteen Thousand Four Hundred only) as revised compensation and the interest awarded by the Tribunal at 9.5% per annum from the date of filing the claim petition till the date of deposit, is confirmed.

Heads	Amount awarded by the Tribunal	Amount enhanced by this Court
Transportation	Rs. 5,000.00	Rs. 15,000.00
Extra nourishment	Rs. 10,000.00	Rs. 15,000.00
Damages to Dress	Rs. 400.00	Rs. 400.00
Medical Expenses	Rs. 10,000.00	Rs. 10,000.00
Education	Rs. 5,000.00	Rs. 10,000.00
Loss of marital prospects	Rs. 10,000.00	Rs. 20,000.00
Loss of parent's income during treatment	Rs. 10,000.00	Rs. 15,000.00
Pain and suffering	Rs. 25,000.00	Rs. 50,000.00
Disability	Rs. 80,000.00	Rs. 1,60,000.00
Amenities	-	Rs. 20,000.00
Total	Rs. 1,55,400.00	Rs.3,25,400.00

12. The Insurance Company is directed to deposit the enhanced award of Rs.3,15,400/- along with accrued interest to the credit of M.C.O.P.No.1251 of 2002 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order. Since the claimant has been declared major in the year 2008, she shall be paid the entire revised compensation awarded by this Court along with accrued interest, by means of a crossed Account Payee Cheque, favouring only her and it should not be issued in favour of any other person/Company.

13. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016, scrupulously.

14. Resultantly, the Appeal filed by the claimant in C.M.A.No.577 of 2010 is allowed and the Appeal filed by the Insurance Company in C.M.A.No.631 of 2011 is dismissed. No costs. Consequently, connected M.P.No.1 of 2011 in C.M.A.No.631 of 2011 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

1.The V Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.A.Babu, Advocate Sr.25189

+1cc to Mr.M.B.Gopalan, Advocate SR.25682

C.M.A.No.577 of 2010
and
C.M.A.No.631 of 2011

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srg 16/11/2016

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