

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.873 of 2009

and MP.No.1 of 2010 &

CMP.No.16352 of 2016 in CMA.No.873 of 2009

The New India Assurance Co. Ltd.,
46, Moore Street,
Chennai, .. Appellant/2nd Respondent

Vs.

1.K.Janaki ..Respondent/ Petitioner

2.Essemar Agencies
Rep by its Proprietor,
No.29, Salai Vinayagar Koil Street,
George Town,
Chennai - 600 001 ... Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.06.2008 made in M.A.C.T.O.P.No.4408 of 2004 on the file of the Motor Vehicle Accident Claims Tribunal and Small Causes V Judge, Chennai.

For Appellant : Mr.S.Ramalingam
For Respondents : Mr.G.Balaji Prasad [for R1]
R2 - No appearance

JUDGMENT

The Insurance Company which is arrayed as second respondent in MCOP.No.4408 of 2004 on the file of the V Court of Small Causes (Motor Accident Claims Tribunal), Chennai, has preferred this appeal challenging the quantum of award passed by the Tribunal, in a case where claimant has approached the Tribunal seeking compensation for her injury.

2. It is a case of a pedestrain hit by an autorickshaw driven rashly and negligently by its driver. The victim girl, the claimant before the Tribunal and the first respondent herein, at that relevant time was aged 20 years, and was stated to be prosecuting her studies besides being engaged in a part time avocation, has suffered fracture to her head, facial bone and maxillary bone. She was treated as an in-patient in the

Government Stanely Medical College between 27-08-2004 to 09-09-2004. On various heads she made a claim for Rs.4,00,000/- before the Tribunal, against which the Tribunal has passed an award of R.1,87,000/-. The brief summary of the amount claimed and awarded is tabulated below :

Heads	Amount claimed (Rs.)	Amount awarded (Rs.)
Loss of earnings (from 27.8.2004 to 27.2.2005)	9,000	5,000
Transport charges to hospital	6,000	5,000
Extra nourishment	5,000	5,000
Damages to wrist watch	2,000	2,000
Mental agony of the claimant and her family members	30,000	10,000
Medical expenses	30,000	10,000
Loss of matrimonial prospects and disfiguration of face	50,000	20,000
Pain and sufferings	45,000	10,000
Permanent disability	1,23,000	70,000
Loss of earning power	1,00,000	50,000
Total :	4,00,000	1,87,000

3. The learned counsel for the appellant raised objection to the award only on three heads :

- The Tribunal went wrong in awarding compensation of Rs.10,000/- to the family members for their mental agony especially when they are not before the Tribunal claiming it.

- There is a conflict of medical opinion in assessing disability in that while P.W.2, assessed the disability at 30%, P.W.3, the dentist, who assessed the disability at 40%, the Tribunal has randomly, if not arbitrarily awarded Rs.70,000/-. No positive evidence was forthwith coming regarding the extent of disability, more so, when the claimant has not clarified which one of the two opinions has to be relied upon, the Tribunal has also not entered a finding as to the extent of disability.
- For an injury suffered to her face, Tribunal has fixed the loss of earning capacity a Rs.50,000/- which is untenable.

4. Per contra, the learned counsel for the respondents argued that the Tribunal has been reasonable enough to determine the compensation on various heads and in fact on the head of disability, it appears to have discounted the percentage of disability as opined by P.W.3. the dentist, whose information ought to have weighed with the Tribunal.

5. On going through the evidence on record as to the total quantum, this Court does not find the same to be irrational or excessive. However, on specific heads such as the one contended by the counsel for the appellant that on the head of mental agony to the members of the claimant's family, I find the compensation awarded by the Tribunal may have to be deleted but added to the head of pain and suffering where I find the compensation amount is on the lower side. Accordingly, on the head of pain and suffering the appellant is entitled to get Rs.30,000/-. On the head of permanent disability, I do not find any reason to interfere with the award and the same is confirmed. On the head of loss of earning power, I find that this portion of the award is slightly unrealistic. I therefore reduce the same to Rs.10,000/-. Taking into consideration that the claimant was a young unmarried girl at the time of the accident, the facial fracture would have affected a marital prospects. Therefore, she should be adequately compensated there and I therefore enhance the award amount to Rs.50,000/- under the head of facial deformities affecting matrimonial prospects of the claimant. The final figure thus appears as below :

Heads	Amount (Rs.)
Loss of earnings (from 27.8.2004 to 27.2.2005)	5,000
Transport charges to hospital	5,000
Extra nourishment	5,000
Damages to wrist watch	2,000
Mental agony of the claimant and her family members	Nil
Medical expenses	10,000
Loss of matrimonial prospects and disfiguration of face	50,000
Pain and sufferings	30,000
Permanent disability	70,000
Loss of earning power	10,000
Total :	1,87,000

6. It is submitted that the appellant has deposited the entire award amount as ordered by this Court, out of which, the claimant has already withdrawn 50% of the award amount. The claimant is at liberty to withdraw the remaining 50% of award amount forthwith. This Civil Miscellaneous Appeal is hereby dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To:

The Motor Accident Claims Tribunal,
(V Court of Small Causes),
Chennai.

+1 cc to Mr.S.Ramalingam, Advocate,sr.69058

+1 cc to Mr.S.Gangaram prasad,advocate,sr.68979.

rk(co)