



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.4.2016

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THE HON'BLE Ms. JUSTICE V.M.VELUMANI

C.M.A. (MD) No.31 of 2015

Amsavalli @Amuthayammal

.. Appellant/Petitioner

vs.

1.M/s. Anakainu Manufacturing,
rep. through its Proprietor,
No.122/2, Chinna Anuppanadi,
Madurai - 625 009.

2.The Oriental Insurance Co. Ltd.,
represented by its Divisional Manager,
West Veli Street, Opp. Railway Station,
Madurai- 625 001.

.. Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No. 867 of 2009 on the file of Motor Accident claims Tribunal/Addl. District and Sessions Court/Fast Track Court No.3, Madurai dated 04.10.2011.

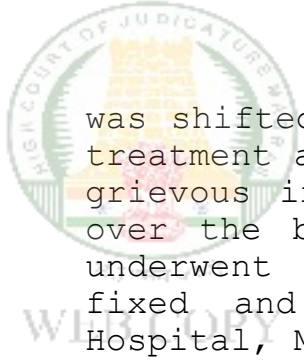
For Appellant	: Mr.K.Kumaravel
For R1	: Mr.A.S.Rajeswari
For R2	: Mr. S.Veeranasamy

JUDGMENT

The claimant is on appeal challenging the award dated 04.10.2011 made in M.C.O.P.No. 867 of 2009 on the file of Motor Accident claims Tribunal/Addl. District and Sessions Court/Fast Track Court No.3, Madurai.

2. The appellant is the claimant. The first respondent is owner of the vehicle which is involved in the accident and second respondent is the insurer of the vehicle.

3. The facts of the case:- On 02.03.2008, when the appellant was waiting for the bus at Chinthamani bus stop, a goods vehicle belonging to the first respondent bearing registration No. TN 59 AH 2831 was driven in a rash and negligent manner in a high speed and dashed against the appellant and she suffered injuries. She was admitted on the same day in the City hospital, Madurai and then she



was shifted to Government Rajaji hospital at Madurai where she took treatment as in patient from 03.03.2008 to 18.3.2008. She sustained grievous injuries all over right leg, head and blood injuries all over the body and one tooth was also broken. On 02.03.2008, she underwent operation in Madurai City Hospital and metal plate was fixed and subsequently, it was removed in Government Rajaji Hospital, Madurai. She was working as a coolie and she earned a sum of Rs.4000/- per month. She suffered 20% disability and therefore, she claimed a sum of Rs.1,50,000/- as compensation.

4. The first respondent remained exparte. The second respondent filed counter statement and denied the manner in which the accident took place and submitted that the vehicle was not insured with them.

5. Before the Tribunal, the appellant examined herself as P.W.1 and examined one Dr.P.S.Shanmugam as P.W.2 and marked 7 documents as Exs.P.1 to P.7. The respondents did not let in oral and documentary evidence.

6. The Tribunal framed necessary points for consideration. On considering the pleadings, both oral and documentary evidence and arguments, the Tribunal came to a conclusion that the accident occurred due to the rash and negligent driving by the driver of the goods vehicle. The Tribunal held that the appellant suffered only simple injuries and awarded only a sum of Rs.15,000/- as compensation. Not being satisfied to the amount awarded, the present Civil Miscellaneous Appeal is filed.

7. The learned counsel for the appellant contended that the Tribunal failed to consider Ex.P7-Disability Certificate that appellant suffered 20% disability. The Tribunal failed to consider the evidence of P.W.2, doctor in a proper perspective. The Tribunal erred in not considering the fact that the appellant was taking treatment as inpatient from 02.03.2008 in the City hospital, Madurai and took treatment at Government Rajaji hospital, Madurai as inpatient from 03.03.2008 to 18.3.2008 and she under went operation for fixing the plate and subsequently, for removing the same. The Tribunal has not awarded any amount for loss of amenities, pain and sufferings, Transport, extra nourishment, medical expenses and attendant charges. Relying on the Judgment reported in 2013(2)TNMAC 583 [NATIONAL INSURANCE CO. LTD VS. G.RAMESH, the learned counsel for the appellant contended that the Tribunal ought to have considered the claim made by the claimant and awarded compensation under different heads.

8. The learned counsel for the respondent contended that the appellant suffered only simple injuries and therefore, compensation awarded by the Tribunal is a just compensation and there is no circumstances warranting interference for enhancement of compensation.

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9. I have considered the rival submissions put forward by



either side and also perused the materials on record.

10. Points for consideration:

Whether the appellant is entitled for enhancement of compensation ?

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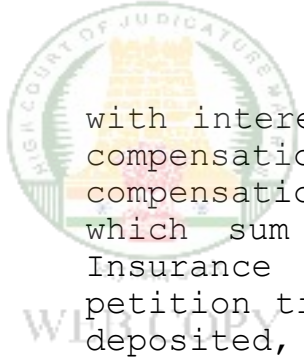
11. From the materials on record, it is seen that the appellant was treated as inpatient from 02.03.2008 to 08.03.2008 in the City Hospital and Government Rajaji Hospital, Madurai. She sustained grievous injuries on her right leg, left leg, head and blood injuries all over the body and one tooth was also broken. She underwent surgery and a metal plate was fixed and subsequently, metal plate was removed in Government Rajaji Hospital. P.W.2, doctor spoke about the nature of injuries suffered by the appellant and stated that the appellant suffered 20% partial disability. The Tribunal without properly considering the evidence of P.W.2 and also Ex.P.5-medical bill and Ex.P.7-Disability certificate erred in awarding a total compensation of Rs.15,000/-. The compensation awarded is too meagre. The contention of the learned counsel for the appellant that the appellant is entitled for enhancement of compensation under different heads, has considerable force.

12. Considering the materials on record, this Court is of the view that a sum of Rs.40,000/- (2000 x 20%) could be awarded for the disability assessed at 20%. Further, a sum of Rs.15,000/- towards pain and suffering, a sum of Rs.1,000/- towards transport, a sum of Rs.5,000/- towards extra nourishment, a sum of Rs.8,400/- towards medical bills (Ex.P.5) and a sum of Rs.5,000/- for attendant charges, totaling a sum of Rs.74,400/- is awarded as compensation. The award stands modified as follows:

Heads	AMOUNT AWARDED BY THE TRIBUNAL	Modified Amount	AMOUNT AWARDED BY THIS COURT
Permanent Disability	NIL	Rs.40,000/-	granted
Pain and suffering	NIL	Rs. 15,000/-	granted
Extra Nourishment	NIL	Rs. 5,000/-	Granted
Medical bills	NIL	Rs. 8,400/-	granted
Transport	NIL	Rs. 1,000/-	granted
Attender Charges	NIL	Rs. 5,000/-	granted
Total	Rs.15,000/- (consolidated compensation)	Rs. 74,400/- (rounded off to Rs.75,000/-)	Enhanced a sum of Rs.60,000/-

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13. Thus, an enhanced compensation of Rs.60,000/- is granted



with interest at the rate of 7.5% p.a., which is over and above the compensation awarded by the Tribunal. Accordingly, the total compensation is arrived at Rs.75,000/- [Rs.60,000 + Rs.15,000], which sum is liable to be deposited by the second respondent Insurance Company with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the same, less the amount, if any, already withdrawn, by making necessary application before the Tribunal.

14. The Civil Miscellaneous Appeal is partly allowed on the above terms. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident claims Tribunal/
Additional District and Sessions Judge,
Fast Track Court No.3, Madurai
2. The Divisional Manager,
Oriental Insurance Co. Ltd.,
West Veli Street, Opp. Railway Station,
Madurai- 625 001.

+ 1 CC TO M/S.K.KUMARAVEL, ADVOCATE IN SR No. 22265/16

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TE/ARK-PV/SAR-III : 13/07/2016 : 4P/4C

C.M.A. (MD) No.31 of 2015
21.04.2016