

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

(Judgment Reserved on : 08.03.2017)

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1284 of 2011

J.Venkatalakshmi

.. Appellant

.. Vs ..

1. S.S.Muralidharan

2. The Oriental Insurance Co., Ltd.,
Regional Office,
No.8, Esplanade Road, Chennai-108.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 10.12.2008 made in MACT.O.P.No.230 of 2004 on the file of the III Fast Track Court (Addl. District Judge), Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.C.Munusamy
for M/s. C & K and Law Firm

R1 : Ex-parte

For R2 : Mr.J.Chandran

JUDGMENT

The appellant/claimant has filed this appeal to enhance the claim. The brief facts of the appeal are as follows:-

On 01.01.2004 at about 5.30 hours, while the appellant/claimant was travelling in the auto rickshaw, bearing Registration No.TN 09 Y 6748, the Maruti Esteem Car bearing Registration No.TN 01 L 7047, which came from East to West direction in the opposite side, dashed against the auto rickshaw, in which the appellant was travelling and committed the accident.

2. The appellant/claimant was immediately admitted in the hospital for his injuries caused and the trial Court, after considering the evidence, finally awarded the damages for Rs.42,000/- to the claimant. Aggrieved by the order of the Tribunal, the appellant/claimant has preferred the present appeal.

3. The main grounds of the appeal are as follows:-

The trial Court without considering the injuries caused to the appellant, awarded less amount for damages. The trial Court erred in awarding only Rs.5,000/- for extra nourishment as against the claim of Rs.20,000/-. Further, the Trial Court has not awarded for loss of income, mental agony etc. Further, without considering the gravity and consequences of injuries, the trial Court awarded only Rs.5,000/- as against Rs.30,000/- claimed for pain and sufferings. Further, for permanent disability, the trial Court awarded only Rs.30,000/- against the reasonable claim of Rs.70,000/-. The trial Court awarded Rs.2,000/- towards transportation. The damages caused to the petitioner has to be enhanced from Rs.42,000/-.

4. The learned counsel for the appellant contended that the trial Court without awarding for mental agony and loss of income has awarded meager sum towards the loss of permanent disability. Hence, the amount has to be enhanced as claimed in the claim petition.

5. The learned counsel for the second respondent/Insurance Company contended that the trial Court, after considering the evidence and documents, awarded just and reasonable compensation to the appellant/claimant. There is no reason to interfere in the compensation and he prayed for the dismissal of the appeal.

6. This Court perused the entire records. The trial Court awarded damages as detailed below:-

Permanent disability	-	Rs.30,000
Pain and sufferings	-	Rs.5,000
Extra Nourishment	-	Rs.5,000
Transportation	-	Rs.2,000
Total	-	Rs.42,000/-

7. The amount claimed in the claim petition reads as follows:-

Loss of earning from (01.01.2004 to 30.06.2004)	-	Rs. 45,000
Transportation	-	Rs. 5,000
Extra nourishment	-	Rs. 20,000
Damage to clothing & articles	-	Rs. 2,000
Medical expenses	-	Rs. 30,000
Loss of income & mental		

torture	-	Rs. 20,000
Pain & Sufferings	-	Rs. 30,000
Permanent disability	-	Rs. 70,000
Loss of earning power	-	Rs. 68,000
Total	-	Rs.3,00,000

Restricted to Rs.2,50,000/-. As against the claim, the trial Court awarded total compensation for Rs.42,000/-.

8. In the above circumstances, for the injuries caused to the appellant, on the side of the appellant, they produced the wound certificate (Ex.A4), disability certificate (Ex.A7) and X-ray (Ex.A8). On the side of the appellant, Dr.R.Thiyagarajan was examined as PW-2. There was a fracture in the bones and as per Doctor's evidence, the disability was assessed as 30% permanent disability.

9. In view of the above circumstances, the claim awarded to the appellant for the disability of 30% of Rs.30,000/- is reasonable, for pain and sufferings damages increased from Rs.5,000 to Rs.10,000/-, extra nourishment increased from Rs.5,000/- to Rs.10,000, transportation increased from Rs.2,000/- to Rs.3,000/-. Since the appellant has suffered fracture as stated by the Doctor, she was not able to perform her duty atleast for a period of 3 months and she could not work and she may not even take rest for the above said injuries. For loss of income during the period of taking rest, it has to be fixed as Rs.24,000/- for three months at the rate of Rs.8,000/- p.m.

10. This Court is of the considered view that the compensation awarded by the Tribunal has to be modified and enhanced as follows:-

Permanent disability (30%)	-	Rs. 30,000/-
Pain and sufferings	-	Rs. 10,000/-
Transport expenses	-	Rs. 3,000/-
Extra nourishment	-	Rs. 10,000/-
Loss of income	-	Rs. 24,000/-
		Rs. 77,000/-

Hence, the appellant/claimant is entitled for the enhanced compensation of Rs.77,000/-.

11. In the result, the Civil Miscellaneous Appeal is allowed and the claim amount already awarded by the Tribunal is enhanced to Rs.77,000/-. The second respondent-insurance company is directed to pay the enhanced compensation amount to the

appellant/claimant together with interest at 7.5% per annum from the date of petition till the date of deposit. No Costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

kmi

To

1. The Addl. District Court,
(III Fast Track Court)
Motor Accidents Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to M/S.C. Munusamy, Advocate Sr. 17770

+1cc to Mr.J. Chandran, Advocate Sr. 18014

Pre-delivery Judgment
in
C.M.A.No.1284 of 2011

KM(CO)
VR(05/04/2017)

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