

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.689 of 2017
and C.M.P.No.3854 of 2017

The United India Insurance Co. Ltd.,
Rep. by its Branch Manager,
Arani.

.... Appellant / 3rd respondent

versus

1. Solamath Nisha 1st respondent / Petitioner
2. Sundar 2nd respondent / 1st respondent
3. B.Lalbasha 3rd respondent / 2nd respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2006, made in M.A.C.T.O.P.No.202 of 2005 on the file of the Motor Accident Claims Tribunal, Karaikal.

For Appellant : Mr.S.Ramalingam

For R-1 : Mr.R.Murugabharathi

JUDGMENT

The claimant Salamath Nisha, aged 21 years, a Tailor by profession, met with an accident on 07.07.2005, due to which, she suffered fracture on both legs and consequent permanent disablement. Hence, she filed a claim petition in M.A.C.T.O.P.No.202 of 2005 on the file of the Motor Accident Claims Tribunal at Karaikal, claiming a sum of Rs.7,00,000/- as compensation.

2. The Tribunal, after considering the oral and documentary evidence, has awarded the compensation of Rs.2,78,860/-, payable with interest at the rate of 7.5% p.m. from the date of petition till the date of deposit. The break-up details of the compensation reads as under:

The age of the injured has been taken as 21 years at the time of accident. Finding that there is no proof to show that she was a Tailor and also earning a sum of Rs.5,000/- per month, hence, the monthly income notionally has been fixed at Rs.2,000/-. The claimant had suffered fracture of left femur and also a fracture in the right leg. The Doctor, who was

examined as P.W.2, has certified the disability at 82%. However, the Tribunal has taken the disability only at 50% and by adopting the multiplier of '17', the loss of earning capacity has been assessed at Rs.2,04,000/-. The Tribunal has awarded a sum of Rs.25,000/- for pain and suffering; Rs.5,000/- for extra nourishment; Rs.1,000/- for damages to clothing and articles; Rs.1,000/- for transport expenses; Rs.6,000/- for loss of earning for three months. Medical expenses as supported by the bill has been awarded at Rs.36,860/-. The total award is Rs.2,78,860/-.

3. The learned counsel appearing for the appellant would submit that the award of compensation at Rs.2,78,860/- is grossly excessive and disproportionate to the percentage of the disability.

4. It is relevant to point out that though the claimant earned the income at Rs.5,000/-, the Tribunal has taken the monthly income of the claimant at Rs.2,000/- only. Even though the doctor has assessed the disability at 82%, the Tribunal has taken the percentage of disability only at 50%. Therefore, the award on account of loss of earning capacity at Rs.2,04,000/- cannot be said to be excessive. Though the claimant has suffered fracture of femur, it would have a direct impact on the earning capacity as a tailor, the tribunal should have taken the loss of earning capacity as 100% but the tribunal has taken the percentage of loss of earning capacity only at 50% (equating the physical disablement as functional disablement). Moreover future prospective increase in income has not be taken into account in fixing the future loss of income. The compensation awarded under other heads are reasonable. It does not require an interference.

5. Hence, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 31.08.2006, made in M.A.C.T.O.P.No.202 of 2005 on the file of the Motor Accident Claims Tribunal, Karaikal.

6. The Insurance Company is directed to deposit the entire amount of compensation, along with the interest as ordered by the tribunal less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Motor Accident Claims Tribunal,
Karaikal.

C.M.A.No.689 of 2017

sj (co)
ss(6/7/2017)



WEB COPY