

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.12.2016

Judgment Pronounced on : 15.09.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.495 of 2009
and CMP.No.18610 of 2016

A.Sumathi ... Appellant/Claimant

Vs.

1.Madhavan Pillai

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 04.07.2008 in O.P.No.4465 of 2002 on the file of the IV Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellant :Mr.A.Shanmugaraj
For Respondents :Mr.A.R.Karunakaran [R1]
Ms.C.Sangamithirai [R2]

JUDGMENT

The claimant had suffered injuries in a road accident that took place on 22.11.2001 at about 8.00 a.m., on being knocked down by a speeding car while crossing the road, has preferred this appeal seeking enhancement of compensation.

2. As indicated earlier, a car bearing No.TN01-M-0679 dashed against the appellant/claimant when she was crossing the road at Medavakkam Tank Road. In the said accident, she suffered fractures to her right hip, right femur and other multiple injuries all over the body and was treated as an in-patient for nine days [22.11.2001 to 01.12.2001], during which period surgeries were performed to correct her fractures. The appellant was a tailor and was stated to be earning about Rs.5,000/- a month. She was barely 21 years old and was just married. P.W.4, the doctor has assessed the extent of her disability at 70%. He has also testified that the movement of the right thigh of the appellant is reduced by about 30 to 40%,

and as such, she needs a walking stick to walk, that she cannot squat on the floor and would find it difficult to attend her routine household work and also to engage in her avocation as a tailor. He has further opined that if she opts for hip replacement surgeries, much of her agony would reduce.

3. Reckoning the monthly income of the appellant notionally at Rs.2,250/- the Tribunal has passed an award for Rs.2,88,060/- in the manner as tabulated below :

Heads of compensation	Amount Awarded (Rs.)
Loss of earning for 5 months @ Rs.2,250/- p.m.	11,250.00
Transportation	2,000.00
Extra nourishment	1,000.00
Medical Expenses	41,409.80
Servant maid expenses	32,400.00
Towards pain and suffering	10,000.00
Permanent disability	65,000.00
Loss of earning power	25,000.00
Estimated cost for hip replacement	1,00,000.00
Total	2,88,059.80 (rounded off to Rs.2,88,060.00)

4. The learned counsel for the appellant argued that it is a case of functional disability, but the Tribunal has adopted a mechanical process of awarding compensation treating the disability as a non-functional disability. It has ignored the fact that the appellant had suffered injuries to her hip and thigh bone, and given the fact that she was a tailor it would be nigh difficult for her to resume her career, which requires continuous sitting and constant peddling of sewing machine with her legs. The Tribunal has ignored this aspect and almost considered that the appellant could earn her income by employing others. The appellant has also filed CMP.No.18610 of 2016 to enhance the compensation amount from Rs.5,00,000/- to Rs.14,85,410/- for the purpose. The learned counsel argued that the obligation to determine the just and fair compensation is on the Tribunal and while it does not require an application per se, still by way of abundant caution, she has filed this petition. The learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in Nagappa Vs. Gurudayal Singh & others [(2003) ACJ 12].

5. Per contra, the learned counsel for the second respondent/ insurance company argued that when there is no evidence about the medical effect that the appellant could not pursue avocation as before, the Court may not presume it so. If so viewed, given the fact that the accident had taken place in the year 2001, the compensation awarded by the Tribunal is just, fair and reasonable.

6. On carefully perusing the award, this Court finds that the Tribunal has overlooked the medical evidence of P.W.4, where the doctor has testified that it would be difficult for the appellant to sit, walk or squat on the floor. Loss of one's ability to earn, in money terms is just one aspect in determining compensation. But, the activities of an individual in his/her life cannot be confined to mere eking out a livelihood. Secondly, when it is not a disputed fact that the appellant was a tailor, to contend that the appellant could continue to earn by engaging others or in other alternative avocation is an insensitive statement. Taking an overall view of the matter, this Court treats the injuries suffered by the appellant have disabled her functionally, and given the nature of evidence available, this considers it appropriate to fix it at 40%. At Rs.2,250/- as her notional monthly income and adopting a multiplier of 18., the compensation payable for the functional disability of the appellant is $[2,250 \times 12 \times 18 \times 40\%]$ Rs.1,94,400/-. Towards pain and suffering, compensation payable is enhanced to Rs.15,000/-. On other aspects, the award of the Tribunal is confirmed. The break-up details of the enhanced amount of compensation reads as follows:

Heads of compensation	Amount Enhanced (Rs.)
Loss of earning for five months	11,250.00
Transportation	2,000.00
Extra nourishment	1,000.00
Medical Expenses	41,409.80
Servant maid expenses	32,400.00
Towards pain and suffering	15,000.00
Functional disability	1,94,400.00
Loss of earning power	25,000.00
Estimated cost for hip replacement	1,00,000.00
Total :	4,22,459.80 (rounded off to Rs.4,22,460.00)

7. Since the amount which this Court has now determined is just and fair and still falls under the amount claimed by the appellant in her claim petition, this Court does not feel it necessary to deal with CMP.No.18610 of 2016, and hence the same is closed.

8. In the result, the appeal is partially allowed and the compensation is enhanced from Rs.2,88,060/- to Rs.4,22,460/-. The insurance company is directed to deposit the entire amount of compensation along with accrued interest, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon, the claimant is permitted to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The IV Judge
Court of Small Causes
Motor Accidents Claims Tribunal
Chennai.

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

+1 CC to Mr.A. Shanmugaraj, Advocate sr 67638.

+1 Cc to Mr.C. Sangamithirai, Advocate sr 67891

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SV(CO)
SP(10/11/2017)