IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.01.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2536 of 2006 and M.P.No.1 of 2006

Sumathirani @ Durga Bai ... Appellant/Petitioner

Vs.

1. P.T.Arunachalam

2. United India Insurance Company Limited,
   Divisional Office,
   Katpadi Road, Vellore. ... Respondents/Respondent

Prayer:- The Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.01.2006 made in M.C.O.P.No.435 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Vellore.

For Appellant : Mr.V.K.Rajagopalan

For R2 : Mr.D.Bhaskaran

JUDGMENT

The passenger of a bus, who suffered injury when the bus ran and hit a tree on 05.06.2000 has preferred this appeal seeking enhancement of compensation.

2. The victim of the accident was 49 years and was stated to be an Additional Headmistress of a school and owing to the accident, she suffered four injuries, of which one was facial injury and others were injury to her right hand, left wrist etc. PW-2, the doctor, has assessed the disability at 60%, whereas the Tribunal has determined it at 30% and awarded the compensation of Rs.30,000/- for her disability, Rs.30,000/- towards pain and sufferings, Rs.4,000/- towards monthly income, and towards loss of earning power it awarded yet another Rs.30,000/-. Whereas the claimant has approached the Tribunal with the claim of Rs.9,85,000/- and the Tribunal has passed an award for Rs.1,89,327/- payable with interest at 9%. Eventhough the Insurance Company of the bus was arrayed as the second respondent, the Tribunal has passed the award only against the first respondent, the owner of the bus and absolved the

Insurance Company of its liability on the ground that the insurance particulars of the bus was not provided by the claimant to enable it to verify and report.

3. The learned counsel for the appellant contended that the claimants were able to lay their hands on a copy of the insurance policy and produced the same vide M.P.No.1 of 2006, which shows that second respondent had covered the risk arising out of use of the vehicle in question. Accordingly, the third respondent and the Insurance Company would also be jointly liable to pay the whatever compensation amount that is determined in this case.

4. Turning to the quantum of award, the learned counsel for the appellant submitted that the Tribunal has been unduly parsimonious in assessing the quantum of compensation and should have treated the disability of the victim as a functional disability and should have applied the multiplier method to quantify the compensation on loss of earning power. Instead, it has awarded compensation at Rs.1,000/- for every percentage of disability. He also added that due to the injury suffered, the appellant suffered mild disfiguration of her mouth and according to PW-2, the appellant could not even open her mouth entirely.

5. Per contra, the learned counsel for the Insurance company contended that there is no functional disability as the appellant was working only as a headmistress in a school and no document is produced to show that due to her injuries she was proved to have suffered any functional disability. He added that since the copy of the insurance policy was filed only in 2006 no interest shall be mulcted on it for the period anterior to the filing of the insurance policy.

6. As to the quantum, I am convinced that there is nothing on record to indicate that the appellant suffered any serious functional disability and going by the year 2000 standards what has been awarded appears just and reasonable. Indeed even in a case where there is no loss of earning power, the Tribunal has awarded Rs.30,000/- on that head. However, without going into that aspect, I find that the Tribunal has not awarded anything towards disfiguration of the victim. This is important and I award Rs.15,000/- towards disfiguration payable. In all, award amount is enhanced from Rs.1,89327/- to Rs.2,04,327/-.

7. As to the objection of the Insurance Company regarding the payment of interest prior to the filing of the insurance policy, I find the argument slightly amusing as the Insurance Company expects a claimant to be Sherlock Holmes and detect the policy details. Therefore, this appeal is partially allowed and

the compensation amount is enhanced to Rs.2,04,327/-. The Insurance Company is directed to pay the amount with interest at 9% per annum and the same is directed to be paid within four weeks from the date of receipt of a copy of this order, whereupon the claimant is entitled to withdraw the same forthwith. No costs.

sd/
Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

kmi

To

1. The Sub Court,
   Motor Accidents Claims Tribunal, Vellore.

2. The Section Officer,
   V.R.Section, High Court, Madras.

+1cc to Mr.R.Ramesh Advocate SR.No.4438
+1cc to Mr.D.Bhaskaran Advocate SR.No.4670

C.M.A.No.2536 of 2006

CNR(CO)
GN(14/02/2017)