

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2688 of 2004

K.Kala

... Appellant/Petitioner

Vs.

1. Sridhar

2. The United India Insurance Company Ltd.,
Nethaji Road,
Manjakuppam,
Cuddalore - 607 001. .. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1983 amended (Amendment Act M.V. 1994) against the judgment and award made in MCOP.No.713 of 2001 dated 24.07.2003 on the file of the Principal Sub Judge, Cuddalore.

For Appellant : Mr.D.S.Thirumavalavan

For Respondents : Mr.S.Arun Kumar [for R2]

JUDGMENT

The passenger in a State Transport bus who lost her right hand in an accident when the bus she travelled was hit by a lorry bearing registration No.TN-20-3232 belonging to the first respondent and insured with the second respondent on 01.09.2000 at 2.30 a.m. near Mangalam Main Road at Pattukottai, has come forward with this appeal seeking enhancement of compensation.

2. The victim was a 22 year old woman and was working at that relevant time as a receptionist in a private concern and said to be earning monthly salary of Rs.4,000/-. As already indicated, she lost her right hand and the same was amputated. P.W.2, the doctor examined her and had assessed her permanent disability at 85%. The appellant approached the Tribunal with a claim of Rs.15,00,000/- whereas on all heads that includes both pecuniary and non-pecuniary damages, the Tribunal passed an award for a consolidated sum of Rs.2,75,000/- payable with interest at 9% per annum.

3. The learned counsel for the appellant submitted that it is a case of a young woman who had lost her right hand owing to which, she lost her employment. He also questioned the over simplification of the method adopted by the Tribunal in assessing the compensation payable.

4. Per contra, the learned counsel for the second respondent/Insurance Company has argued that the appellant was said to be earning Rs.1,850/- at that relevant time, which is a fair amount going by the year 2000 standards. He also added that the girl has studied only upto 12th standard and therefore her future prospects may have to be understood in the context of qualification.

5. The one striking aspect of which I am in absolute concurrence with the learned counsel for the appellant is as to the method adopted by the Tribunal in determining the compensation amount payable in a case where the victim had lost her hand, as if it was an exgratia that was handed down to the victim. The Tribunal ought to have opted some feasible objective method in categorizing the pecuniary and non-pecuniary damages rather than adopting the method such as the one it has adopted.

6. Turning to the merit of the claim, I find it is the case of 100% disability inasmuch as the girl has lost her right hand, especially the working hand. This was not the situation that she had invited upon herself voluntarily. The appellant was a young woman aged 25 years at that relevant time and her future career prospects and earning was literally stultified due to the amputation of her right hand in the accident. The Tribunal has not shown adequate sensitivity in the matter of determining the compensation. It is pertinent here to note that the claimant lost her job consequent to loss of limb. This too is not a situation that she invited on herself but was forced on her. In order, the compensation amount is just, fair and meaningful, it must commensurate not only with the potential loss that a victim of a road accident would suffer, but also the extent of suffering that he/she would have to endure. If on these parameters the compensation should be termed just and fair, it should be one founded on considerations of functional disability of the claimant. The Tribunal, however has literally lost sight of its objective and has passed an award for a consolidated award amount of Rs.2,75,000/-.

7. As per Ext.P-5, salary certificate, the claimant was stated to be earning Rs.1,850/- per month. The loss of right hand or rather the working hand would imply the young woman, that the claimant was when she suffered the injury, would not be in a position to pursue her avocation. Indeed, the Tribunal

itself has noticed that she was removed from her job in which she was employed in. Accordingly, the extent of functional disability is fixed at 100%, and that she was 22 years old at that relevant time, applying an appropriate multiplier 18, the compensation payable on this head is Rs.3,99,600/- [Rs.1850/- x 12 x 18] and the award amount is enhanced to Rs.4,75,150/- including the compensation awarded on the other heads. The break-up details are as below :

Heads	Enhanced Award Amount
For functional disability	3,99,600.00
Pain and suffering	50,000.00
Loss of earning for 3 months	5,550.00
For extra nourishment	10,000.00
For assistance	5,000.00
For transportation	5,000.00
Total :	4,75,150.00

The appeal is allowed and the compensation amount is enhanced from Rs.2,75,000/- to Rs.4,75,150/- and the second respondent is directed to deposit the enhanced award amount with interest @ 9% per annum, less any amount already deposited within four weeks from the date of receipt of a copy of this order. However, this case has been dismissed for default for few times earlier and the same has been restored atleast for three times and today being the last occasion. It is submitted by the appellant that from 29.10.2007 to 31.04.2011, there appears to be a delay of three and half

years. The appellant would not be entitled to any interest for the default period. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ds

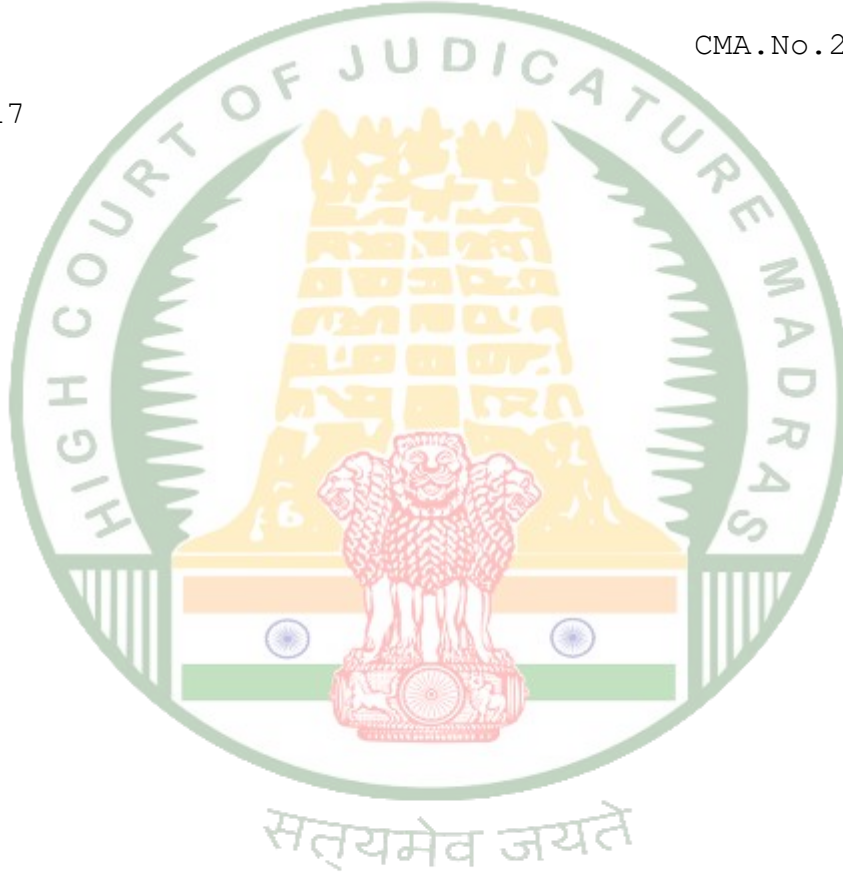
To

1. The Principal Sub Court,
Cuddalore
2. The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.D.S.Thirumavalavan, Advocate, S.R.No.9312
+lcc to Mr.S.Arun Kumar, Advocate, S.R.No.9008

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