



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.192 of 2017

Selvi Arthi

... Appellant/Petitioner

Vs.

1.Palanivel

2.The Branch Manager,

National Insurance Company Ltd.,

No.62, D.S.R.Periya Street,

Kumbakonam,

Thanjavur District.

... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 06.10.2016 made in M.C.O.P.No.198 of 2015, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.S.Siva Thilakar

For R2 : Mr.J.S.Murali

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant-claimant against the award of Rs.1,51,400/- (Rupees One Lakh Fifty One Thousand Four Hundred Only) for the injuries sustained by the appellant-claimant, student, in the accident occurred on 11.11.2009, when she was going on the left side of the road of Thirupanthal-Aaduthurai Main Road along with her By-cycle, the Hero Honda Splender Plus Motorcycle bearing Registration No.TN-68-8024 belonging to the first respondent driven by its driver in a rash and negligent manner and dashed against the appellant-claimant and caused the accident. Therefore, the claim petition is filed.

2. On contest, the Tribunal, based on the evidence of P.W.1 and R.W.1 and filing of Ex.P.1 - F.I.R against the driver of the first respondent-Motorcycle and Ex.P2 - Accident Register, Ex.P3-Medical Certificate, found that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and awarded the compensation of Rs.1,51,400/- (Rupees One Lakh Fifty One Thousand Four Hundred only) to the appellant-claimant. Aggrieved over the quantum of compensation, the appellant-claimant filed the present appeal.



3. Heard Mr.S.Siva Thilakar, learned Counsel for the appellant-claimant and Mr.J.S.Murali, learned Counsel for the second respondent -Insurance Company and perused the materials available on record.

4. The first respondent/owner of the offending vehicle remained exparte before the Tribunal and hence, notice to him is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in **Mrs.Jamunabai v. Chhote Singh** reported in **I (2004) ACC 190 (FB)**.

5. The Tribunal, based on the evidence of P.W.1 and R.W.1, rightly came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and the said vehicle was insured with the second respondent Insurance Company. Therefore, the Tribunal directed the second respondent-Insurance Company to pay compensation at the first instance and then recover the same from the owner of the vehicle. Hence, the said finding based on evidence cannot be interfered with.

6. It is seen that in the accident, the appellant-claimant sustained permanent disability at 40% as per Exs.P.2 and P.6 - Disability Certificate and X-ray respectively and the Tribunal, taking into consideration the fact that the appellant-claimant recovered from the injuries, determined the disability at 40% and the same cannot be found fault with. However, the Tribunal took only a sum of Rs.2,000/- (Rupees Two Thousand only) for 1% permanent disability and awarded a total sum of Rs.80,000/- (Rupees Eighty Thousand only) ($40\% \times 2,000 = 80,000$) and the same is confirmed.

7. A sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was awarded by the Tribunal towards pain and sufferings, which is on the lower side and therefore, this Court enhances the same to a sum of **Rs.50,000/-** (Rupees Fifty Thousand only).

8. Further, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards transportation charges, is on the lower side and therefore, the same is enhanced to a sum of **Rs.10,000/-** (Rupees Ten Thousand only).

9. Similarly, a sum of Rs.6,400/- (Rupees Six Thousand Four Hundred only) awarded towards attendant Charges is very meagre and therefore, a sum of **Rs.10,000/-** (Rupees Ten Thousand only) is awarded by this Court.

10. Further, the Tribunal awarded only a sum of Rs.5,000/- (Rupees Five Thousand only) towards Nutrition and hence, this Court awards a sum of **Rs.10,000/-** (Rupees Ten Thousand only), under the said head.

11. Similarly, a sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded towards Mental Agony and the same is very meagre and therefore, a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) is awarded by this Court.

12. Further, a sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded towards loss of Marriage Prospects is very meagre and therefore, a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) is awarded by this Court.

13. The rate of interest awarded by the Tribunal at 7.5% per annum is confirmed.

14. Accordingly, the appellant-claimant is entitled to a sum of **Rs.2,35,000/-** (Rupees Two Lakhs and Thirty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

15. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

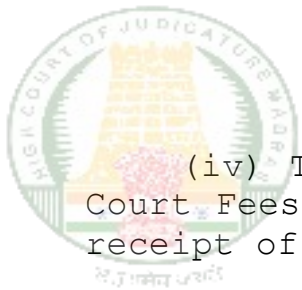
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability (40%)	80,000	80,000	confirmed
2.	For pain and sufferings	25,000	50,000	enhanced
3.	For Transportation	5,000	10,000	enhanced
4.	For attendant charges	6,400	10,000	enhanced
5.	For Nutrition	5,000	10,000	enhanced
6.	For Mental Agony	10,000	25,000	enhanced
7.	For loss of Marriage prospects	20,000	50,000	enhanced
	Total	Rs.1,51,400	Rs.2,35,000	By enhancing a sum of Rs.83,600/-

16. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,51,400/- (Rupees One Lakh Fifty one thousand and Four Hundred only) to a sum of **Rs.2,35,000/-** (Rupees Two Lakhs and Thiruty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The claimant is directed to submit her Savings Bank Account Detail along with the copy of his passbook to the Tribunal **forthwith**;

(iii) The second respondent-Insurance is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.198 of 2015 on the file of the Motor Accidents Claims Tribunal - cum - Chief Judicial Magistrate, Thanjavur at Kumbakonam, within a period of **eight weeks** from the date of receipt of a copy of this judgment;



(iv) The appellant-claimant is directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment;

(v) On compliance of payment of additional Court Fees, if any, by the claimant, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellant-claimant, through RTGS/NEFT system, after getting her Account Details, within a period of **two weeks thereafter**; and

(vi) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(Co)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO M/S.J.S.MURALI,ADVOCATE,SR NO.16083

+1 CC TO M/S.S.SIVA THILAKAR,ADVOCATE SR NO.15881

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MAS/RR/SAR2:4P-5C:19.04.2017

C.M.A. (MD) No.192 of 2017
20.03.2017