



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

CORAM

WEB COPY

THE HON'BLE Mr.JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.197 of 2016
and
C.M.P.(MD)No.2733 of 2016

O.V.Rani ...Appellant /Petitioner
Vs.

1.Periasamy
2.Patel K.N.R.(J.V)
3.Iffco-Tokio
General Insurance Company Ltd.,
Represented through its
Branch Manager,
Trichy.

4.Bajaj Alliance General Insurance
Company Ltd., represented through its
Branch Manager,
12-G, Ram Nagar,
Bye Pass Road, Madurai.

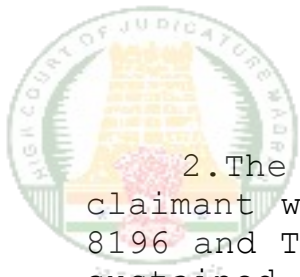
... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment in MCOP No.152 of 2008, dated 16.08.2013, by the learned IV-Additional Sub- Judge, Madurai (Motor Accident Claims Tribunal).

For Appellant	: Mr.N.Murugesan
For R1 & R2	: No Appearance
For 3 rd Respondent	: Mr.S.Srinivasaraghavan
For 4 th Respondent	: Mr.J.S.Murali

J U D G M E N T

The claimant being not satisfied with the award passed in MCOP No.152 of 2008, dated 16.08.2013, by the Motor Accident Claim Tribunal (IV-Additional Sub- Judge), Madurai, has preferred this appeal seeking enhancement of compensation.



2.The brief facts of the case are that on 19.01.2007, when the claimant was proceeding to board a bus, two speedy lorries TN-67-8196 and TN-58-P-6730 dashed against her. Due to the accident, she sustained injuries all over the body and thereafter, she was admitted in Apollo Hospital, Madurai for treatment. She filed the claim petition seeking compensation of Rs.25,00,000/-.

3.The Tribunal, after considering the evidence, both oral and documentary, awarded Rs.5,52,057/- with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the present appeal.

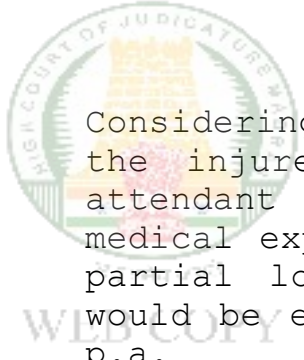
4.According to the appellant, at the time of accident, she was working as ''Teacher'' in Sitalakshmi Higher Secondary School at Thirunagar, Madurai and she was 37 years. From the perusal of the evidence of PW3 Dr.Rizwan Ahamed & PW4 Dr.P.S.Shanmugam, Ex.P3 Discharge Summary, Ex.P.5 Wound Certificate, Ex.P13 Disability Certificate and Ex.P14 X-Ray report, it is seen that the claimant has sustained 52% permanent disability. By applying Rs.2000/- per Percentage, the Tribunal awarded Rs.1,04,000/- towards partial permanent disability; Rs.45,000/- towards partial loss of earning; Rs.2,000/- towards Transportation; Rs.10,000/- towards Extra Nourishment; Rs.3,71,057/- towards medical expenses (as per Ex.P6) and Rs.20,000/- towards pain and sufferings.

5.The learned counsel for the appellant would submit that the injured was treated as inpatient for more than 45 days and she also underwent surgery. Now, she is taking treatment as outpatient, but the tribunal has awarded meagre amount towards pain and sufferings. It is also submitted that the award passed under the head of loss of earning capacity is on the lower side.

6.Per contra, the learned counsel for the third respondent Insurance Company submitted that there is no proof to show that she suffered earning capacity and the award is reasonable.

7.Heard both sides and perused the materials available on record.

8. From the Perusal of Exs.P3 and P4 discharge summary certificates, it is seen that the claimant had taken treatment as inpatient for 45 days and during that period, she underwent surgery. Considering these facts, this court enhances the award of Rs.20,000/- to Rs.1,00,000/- towards pain and suffering. As per the decision of this Court in 2013 (2) TANMAC 583 (*National Insurance Company Limited vs. G.Ramesh*), this court awards Rs.1,56,000/- towards permanent disability, by applying Rs.3,000/- per Percentage. Likewise, the amount awarded under the head of transportation is increased to Rs.10,000/- from Rs.2,000/- and the amount awarded under the head of extra nourishment is increased to Rs.25,000/- from Rs.10,000/-. Further, the Tribunal has not awarded any amount under the head of attendant charges.



Considering the nature of the injuries and the treatment taken by the injures, this Court awards Rs.30,000/- under the head of attendant charges. Besides this, the award of Rs.3,71,057/- for medical expenses based on Ex.P5 and Rs.45,000/- under the head of partial loss of earning are confirmed. In total, the claimant would be entitled to Rs.7,37,057/- together with interest @ 7.5% p.a.

9.In the result, this appeal is partly allowed. The award amount of Rs.5,52,057/- is enhanced to Rs.7,37,057/-. The respondents 3 and 4/Insurance Companies are directed to deposit the modified award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited. On such compliance, the appellant/claimant is permitted to withdraw the entire amount. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The IV-Additional Sub- Judge, Madurai.
(Motor Accident Claim Tribunal).

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.N.MURUGESAN, Advocate, SR.No.86947

+1cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No. 86470

+1cc to Mr.J.S.MURALI, Advocate, SR.No.86385

C.M.A (MD) No.197 of 2016

and

C.M.P. (MD) No.2733 of 2016

10.11.2017

SKN

KK/SV /11.05.2018/SAR-1/3P-7C