

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.331 of 2005

V.Pappammal

... Appellan/Petitioner

Versus

1.D.Dinesh

2.A.Chenniappan

3.The Manager,

New India Assurance Co. Ltd.,

Branch Office, Amman Complex,

11, E.V.N.Road, Erode - 11.

(1st Respondent given up)

... Respondents/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 06.01.2004 made in MCOP No.839 of 2002 on the file of the Motor Accidents Claims Tribunal (First Additional Sub Court), Erode.

For Appellant : Mr.N.Manokaran

For R1 and R2 : Exparte

For R3 : Mr.P.G.Padmanabhan

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 06.01.2004 made in MCOP No.839 of 2002 on the file of the Motor Accidents Claims Tribunal (First Additional Sub Court), Erode.

2. The brief facts of the case are as follows :-

On 02.03.2002 at about 5.30 a.m., the claimant along with one Perumal were standing in front of the Erode Municipal Office at Gandhi Road, at that time, a Motor Cycle bearing Registration No.TN-33-Q-0406, came in south to north in a rash and negligent riding with high speed, hit against the claimant and she sustained multiple injuries all over the body. The claimant has claimed a sum of Rs.3,50,000/- as compensation.

3. The third respondent/Insurance Company, in the counter statement, has stated that the claimant himself has contributed to the negligence by his rash and negligent riding of his motor cycle. The further averment made by the Insurance Company is that there is no proof for occupation and income of the claimant. As regards the age of the claimant, it is mentioned as 50 years in the Accident Register and in the Observation Mahazar, but in the claim petition, it is mentioned as 40 years.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that it is the Motor Cycle, which was driven by the first respondent in a rash and negligent manner and hit against the claimant. The said fact was elicited from the FIR and the Tribunal has awarded a sum of Rs.80,500/- as compensation under the following heads ;

Heads	Amount awarded by the Tribunal (Rs.)
For Medical Expenses	25,000.00
For Transport expenses	2,000.00
For Nourishment	3,500.00
For pain and suffering, disability and loss of future earnings	50,000.00
Total compensation	80,500.00

Aggrieved against the said award, the claimant has preferred this appeal.

5. In the grounds of appeal, the appellant/claimant has stated that the accident occurred only due to the negligent riding of the rider of the Motor Cycle and the Tribunal has awarded Rs.80,500/- is very meager. Further grievances raised by the appellant/claimant is that, for the permanent disability no separate amount has been awarded, since the claimant is immobilized. In spite of the documents filed by the claimant, Exs.A1 to A11 to prove the treatment, medical expenses and disability, the Tribunal has awarded minimum compensation, without assigning any reason. When the claimant incurred medical expenses to the tune of Rs.60,000/-, the Tribunal has awarded only a sum of Rs.25,000/-. Due to the accident, the injuries sustained by the claimant, he sustained severe pain and suffering and loss of enjoyment of life and it caused incapacity to earn her livelihood. Further the evidence of P.W.2-Doctor, who has spoken about the disability was also not considered and the period of treatment taken by the claimant as inpatient for 20 days was also not considered. The appellant/claimant argued

that the Tribunal has not considered the income, age and the disability sustained by the claimant.

6. On a perusal of the records, it is seen that the claimant has filed Exs.A1 to A11. In which, Ex.A3 is the Accident Register, Ex.A8 is the medical bills and Ex.A9 is the Identity Card issued by the hospital. It is the argument of the appellant/claimant that immediately after the accident, the claimant was taken to the Government Hospital, Erode and again she was shifted to Baby Hospital at Marappalam for better treatment, wherein, a surgery was done and subsequently skin scrapping was also done to the claimant. These facts are very much reveals that the above said document filed by the claimant. In view of the above, it is proved that the claimant had sustained grievous injuries, for which she underwent a surgery.

7. After analyzing the evidence and documents, the disability fixed by the tribunal at 25% against the claim of 30% is quite proper and reasonable. For medical bills, the Tribunal has awarded a sum of Rs.25,000/- against the claim of Rs.60,000/-. The medical bills filed by the appellant/claimant were also verified and found that the sum needs to be reasonably enhanced. It is also observed that the grievances of the appellant that the total sum of Rs.80,500/- was awarded by the Tribunal is against the beneficial enactment. The Tribunal has to award reasonable amount for 'loss of income' and for the 'loss of earning power'. These aspects were not considered by the Tribunal.

8. On a perusal of the evidence and documents and arguments on the side of the claimants, no documents were placed before the Tribunal regarding the occupation of the claimant as sweeper and for the monthly income that she was earning at the time of accident. Hence, the sum awarded by the Tribunal is quite reasonable. This Court by considering the nature of injury and period of treatment underwent by the claimant and the disability is inclined to enhance the amount to some extent under the heads medical expenses and pain and suffering and loss of future earnings. Accordingly, the sum awarded under the head medical expenses is enhanced to Rs.40,000/- and for the head pain and suffering, disability and loss of future earnings, the sum is enhanced to Rs.60,000/-. Accordingly, the sum awarded by the Tribunal is enhanced under the following heads ;

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Medical Expenses	25,000.00	40,000.00
For Transport expenses	2,000.00	2,000.00

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Nourishment	3,500.00	3,500.00
For pain and suffering, disability and loss of future earnings	50,000.00	60,000.00
Total compensation	80,500.00	1,05,500.00

9. In view of the above said enhancement, this Civil Miscellaneous Appeal is allowed. No costs.

10. Accordingly, the Insurance Company is directed to deposit the enhanced award amount by this Court, with interest at 7.5% and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant's bank account through RTGS within one week thereon. The claimant is directed to pay additional Court fee for the enhanced amount.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(First Additional Subordinate Judge),
Erode.

2. The Section Officer,
V.R.Section,
High Court, Madras.(2 copies)

+1 CC to Mr.P.G.Padmanabhan, Advocate sr 66889.
+1 CC to Mr.N.Manokaran, Advocate sr 67189.

CMA.No.331 of 2005

MP(CO)
SP(20/03/2019)