

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.11.2018

CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1475 of 2010

Anusha

... Appellant

..Vs..

1.P.Anbalagan
2.The Divisional Manager,
M/s. United India Insurance Company Limited,
Divisional Office,
Cuddalore

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree in M.C.O.P.No.1402 of 2005 dated 21.01.2010 on the file of the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Cuddalore.

For Appellant : Mr.S.Kalyanaraman

For Respondents : Mrs.R.Srividya for R2
R1 - No appearance

JUDGMENT

The appellant is the claimant in M.C.O.P.No.1402 of 2005 dated 21.01.2010 on the file of the Motor Accidents Claims Tribunal, (II Additional Subordinate Judge), Cuddalore.

2.The brief facts of the case of the claimant is as follows:

On 18.07.2005 at about 08.33 p.m., the appellant/claimant was travelling in a two wheeler bearing Registration No.TN-Y-01-A-0833 as a pillion rider and since the rider of the two wheeler drove the vehicle rashly and negligently, she fell down and sustained injuries and she was immediately rushed to nearby Krishna Hospital where she had been treated as an inpatient for 9 days. The appellant/claimant sustained grievous injuries and Dr.V.Ramalingam (PW2) has assessed the partial permanent disability as 45%.

3. The trial Court, after analysing the entire evidence on record, awarded a compensation of Rs.1,43,996/- to the claimant together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The various heads under which the compensation amount was awarded are extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Partial permanent disability	Rs.90,000/-
2.	Transportation charges	Rs. 5,000/-
3.	Extra nourishment charges	Rs. 5,000/-
4.	Pain and sufferings	Rs.10,000/-
5.	Medical Expenses	Rs.33,995/-
Total		Rs.1,43,996/-

4. Aggrieved over the quantum of compensation awarded by the trial Court, the appellant has filed the present appeal.

5. Mr.S.Kalyanaraman, the learned counsel appearing for the appellant contended that the appellant was aged about 19 years on the date of the accident and she had sustained a fracture on her right thigh. He also contended that though an operation was performed, there is a malunion of bones on her right thigh. It is further contended by him that the trial Court without considering the aspect that the appellant/claimant was aged 19 years, had awarded only a sum of Rs.90,000/- for the partial permanent disability. It is also contended that no amount was awarded towards loss of amenities and that a meagre amount was awarded under the heads 'transportation', 'extra nourishment' and 'pain and sufferings'.

6. Per contra, the learned counsel for the second respondent/United India Insurance Company would contend that since the accident had taken place during the year 2005, the award passed by the Tribunal is in order and does not need any interference by this Court.

7. A perusal of the discharge summary as well as the disability certificate shows that the appellant sustained fracture on her right leg. The malunion of shaft of femur of right thigh would definitely affect her marital prospects and therefore, a sum of Rs.1,35,000/- is awarded towards partial permanent disability. Apart from this, the appellant/claimant is entitled for the following enhancement. A sum of Rs.15,000/- is awarded towards loss of amenities and Rs.10,000/- is awarded instead of Rs.5,000/- towards extra nourishment. Apart from this a sum of Rs.25,000/- is awarded for the pain and sufferings and for mental agony undergone by the appellant. The appellant has also adduced acceptable evidence to show that she has incurred a sum of Rs.33,995/- towards medical expenses. Thus, the enhanced compensation under various head is extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Partial Permanent Disability	1,35,000/-
2.	Transportation charges	5,000/-
3.	Loss of Amenities	15,000/-
4.	Attendant Charges	5,000/-
5.	Extra Nourishment	10,000/-
6.	Pain and Sufferings and Mental Agony	25,000/-
7.	Medical Expenses	33,995/-
8.	Future Medical Expenses	25,000/-
Total		Rs.2,53,995/-

8. The above amount minus Rs.25,000/- (future medical expenses) would carry interest at the rate of 7.5% per annum.

9. In the result,

(i) The appeal is partly allowed and a sum of Rs.2,53,995/- (Rupees two lakhs fifty three thousand and nine hundred ninety five only) is awarded to the appellant/claimant as compensation together with interest at 7.5% per annum (excluding future medical expenses) from the date of filing of the claim petition till the date of deposit. The United India Insurance Company, namely, the second respondent is directed to deposit the enhanced amount of compensation together with interest to the credit of M.C.O.P.No.1402 of 2005 on the file of the Motor Vehicle Accidents Claims Tribunal, II Additional Subordinate Judge, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is at liberty to withdraw the amount.

(ii) The claimant is directed to pay necessary Court fee for the enhanced award amount. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

mbi/dna

To

The II Additional Subordinate Judge,
Cuddalore, (Motor Accidents Claims Tribunal).

Copy To:

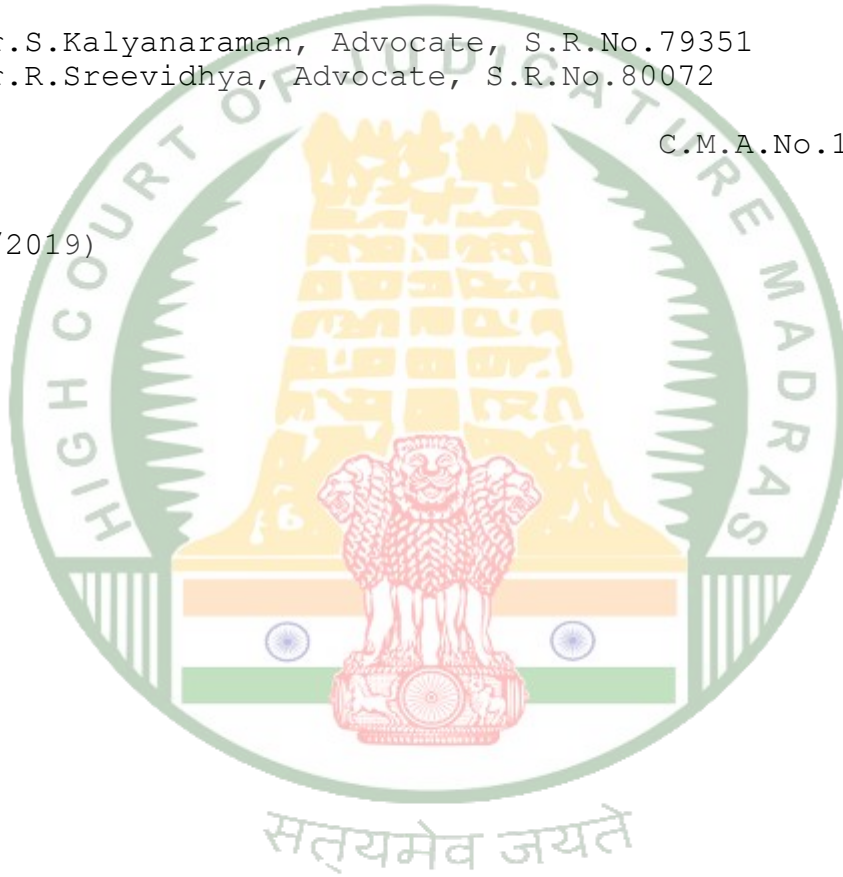
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Kalyanaraman, Advocate, S.R.No.79351
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.80072

C.M.A.No.1475 of 2010

SSI (CO)

RRS (10/05/2019)



WEB COPY