

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2842 of 2010

and

M.P.No.1 of 2010

The Divisional Manager,
United India Insurance Company Limited,
No.13 A, Nethaji Road,
Cuddalore.

... Appellant/2nd Respondent

1.Sumathi ...1st Respondent/Petitioner

2.P.Raja ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 11.04.2007 in M.A.C.T.O.P.No.604 of 2005 passed by the Motor Accidents Claims Tribunal (Additional Sub Judge) No.1, Cuddalore.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : No appearance for R1
R2-Exparte

JUDGMENT

The Divisional Manager, United India Insurance Company Limited, Cuddalore has filed the present appeal questioning the quantum of compensation awarded by the trial court.

2.The brief case of the first respondent/claimant is as follows:

On 11.11.2001 at about 21.45 hours, the first respondent/claimant was walking along the Cuddalore - Nellikkuppam main road. At that time, a speeding lorry bearing Registration No. TN 45 5639 hit the first respondent/claimant, as a result of which, she sustained injuries. She was immediately rushed to the Government Hospital at Cuddalore. Subsequently, she took treatment in 'Krishna Medical Hospital', Cuddalore.

3.According to the first respondent/claimant, the rash and negligent driving of the driver of the lorry bearing

Registration No. TN 45 5639 was the cause of the accident and that since the said lorry was insured with the appellant/second respondent, both of them are jointly and severally liable to pay compensation to the first respondent/claimant for the injuries sustained by her.

4.The trial court after analysing the evidence on record, awarded a compensation of Rs.2,56,715/- together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the trial court, the United India Insurance Company has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

5.Mr.M.J.Vijayaraghavan, learned counsel appearing for the appellant contended that when the wound certificate (Ex.P4) dated 11.11.2001, clearly shows that the injuries sustained by the first respondent/claimant are simple in nature, the trial court ought not to have awarded a sum of Rs.2,56,715/-.

6.A perusal of wound certificate (Ex.P4) issued by Dr.V.Ramalingam, Government Hospital, Cuddalore shows that the first respondent/claimant sustained a fracture and she was admitted as an inpatient from 11.11.2001 to 17.11.2001. The certificate further reads that the claimant was again admitted on 06.12.2001 and the X-ray and CT scan clearly shows that the claimant suffered L1 vertebra compression fracture. Moreover, Dr.S.K.I.Raj (P.W.2) has assessed the partial permanent disability as 40%. The tribunal has adopted the multiplier method and awarded a sum of Rs.1,62,000/- for loss of earning power. The claimant was a vegetable vendor and in the absence of evidence to show that she had suffered permanent disability, the tribunal should not have adopted multiplier method as per the decision of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. A perusal of the disability certificate (Ex.P9) clearly shows that the doctor (P.W.2) has not attached any working sheet along with the said certificate (Ex.P9). The first respondent/claimant did not file any discharge summary to show the treatment given to her. Therefore, in the facts and circumstances of the present case, the partial permanent disability is fixed as 20% and a sum of Rs.20,000/- is awarded towards loss of earning power since the accident took place in the year 2001. The tribunal has further awarded a sum of Rs.50,000/- towards future medical expenses without any evidence. Therefore, no amount can be awarded under the head future medical expenses. Hence, the first respondent/claimant is entitled to the following amount as detailed hereunder:

S.No	Head	Amount granted
1.	Loss of earning power	Rs.20,000/-
2.	Pain and sufferings	Rs.5,000/-
3.	Extra nourishment	Rs.5,000/-
4.	Transportation	Rs.1,000/-
5.	Medical expenses	Rs.28,715/-
Total		Rs.59,715/-

Thus, the first respondent/claimant is entitled to the compensation of Rs.59,715/- which shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

7.It is represented by the learned counsel appearing for the appellant that the United India Insurance Company has already deposited a sum of Rs.1,75,000/- to the credit of the Motor Accidents Claims Tribunal. Therefore, the Insurance Company is permitted to withdraw the excess amount paid by them.

8.With the above observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge No.1,
Cuddalore.

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

+1cc to Mr.J.Vijayaragavan, Advocate, S.R.No.79866

C.M.A.No.2842 of 2010
and
M.P.No.1 of 2010

RV (CO)
GSP (28/01/2019)