

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3771 of 2011

Minor Gayathri  
Rep. by her Guardian next friend  
Mother Gomathi .. Appellant/Claimant

Vs

1.A.Sitha Gounder

2.M.P.Nagarajan

3.United India Insurance Company Ltd.,  
Divisional Office,  
Muthiya Complex,  
2<sup>nd</sup> Floor, Door No.1170, Mettur Road,  
Erode - 638 001. ..Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree of the Motor Accident Claims Tribunal (II Additional Subordinate Court) Erode in M.C.O.P.No.144 of 2010 dated 29.08.2011.

For Appellant : Mr.S.Kaithamalai kumaran

For 3rd Respondent : Mr.T.Ravichandran

Respondents 1 and 2 : Exparte

JUDGMENT

The appellant is the claimant in MCOP No.144 of 2010 on the file of the II Additional Subordinate Judge, Motor Accident Claims Tribunal Court, Erode.

2. The case of the Appellant/Claimant in nut shell is as follows: On 30.03.2010, the appellant along with her friend boarded a bus bearing Registration No. TN-33-AJ-8699 belonging to the 2<sup>nd</sup> respondent. At about 12.00 noon, when she was travelling in the bus, the driver of the bus drove the bus rashly and negligently, as a result which, the appellant/

claimant was thrown out of the bus and she sustained injuries all over her body. Immediately, she was rushed to the K.M.C.Hospital, Perundurai and was treated as an in patient. According to the appellant/claimant, the rash and negligent driving of the driver of the bus was the cause of the accident. Since said bus belonging to the 2<sup>nd</sup> respondent was insured with the 3<sup>rd</sup> respondent/ the United India Insurance Company Ltd., both of them are jointly and severally liable to pay compensation to the appellant.

3. The first and second respondent remained absent and were set exparte in Trial Court. The 3<sup>rd</sup> respondent filed his counter affidavit denying all the allegations of the appellant/claimant.

4. The II Additional Subordinate Judge, Motor Accident Claims Tribunal, Erode, after analysing the evidence on record, awarded a compensation of Rs.4,20,000/- (Four lakhs twenty thousand) together with interest at the rate of 7.5% per annum to the appellant/claimant. The award passed by the Tribunal under various heads, is extracted hereunder.

| S.No  | Particulars            | Amount (R.s) |
|-------|------------------------|--------------|
| 1     | Medical Expenses       | 3,30,000/-   |
| 2     | Transport Expenses     | 10,000/-     |
| 3     | Pain & Sufferings      | 30,000/-     |
| 4     | Extra Nurishment       | 10,000/-     |
| 5     | Disability (20 x 2000) | 40,000/-     |
| Total |                        | 4,20,000/-   |

5. Not satisfied with the quantum of award passed by the Trial Court, the appellant has filed the present appeal seeking for enhancement of compensation.

6. Mr.S.Kaithamalai kumaran, learned counsel for the appellant would contend that the appellant was aged 17 years on the date of accident and she sustained fracture on her left temporal bone. He would further contend that when the doctor Krishna Samy assessed her disability as 28%, the trial Court was not justified in reducing the same as 20%.

7. A Perusal of the judgment shows that the Tribunal without assigning any acceptable reason, has reduced the partial

permanent disability from 28% to 20%. Therefore, the partial permanent disability is fixed as 28%. Since the accident took place on 30.03.2010, the monthly income of the claimant is fixed at Rs.3,000/- and the partial permanent disability is calculated at (28x3000) Rs.84,000/-. Apart from the above amount, the Tribunal has awarded a sum of Rs. 10,000/-, 30,000/-, 10,000/- towards Transportation charges, Pain and sufferings, extra nourishment respectively, which appears to be very meagre and therefore requires enhancement on those heads. The appellant/claimant has produced medical bills to the tune of Rs.3,30,000/-. Hence, the revised compensation is extracted here under.

| S.No | Particulars                   | Amount (R.s) |
|------|-------------------------------|--------------|
| 1    | Medical Expenses              | 3,30,000/-   |
| 2    | Transportation charges        | 15,000/-     |
| 3    | Pain & Sufferings             | 50,000/-     |
| 4    | Extra Nurishment              | 20,000/-     |
| 5    | Loss of Disability (28 x3000) | 84,000/-     |
| 6    | Attender's Charges            | 10,000/-     |
| 7    | Loss of amenities             | 10,000/-     |
|      | Total                         | 5,19,000/-   |

8. In the result,

(i) The appellant/claimant is entitled to the compensation of Rs.5,19,000/- together with interest at the rate of 7.5% per annum. The 3rd respondent/Insurance company is directed to deposit the enhanced award amount with interest less the amount already deposited by them within a period of four weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the 3rd respondent, the appellant/claimant is entitled to withdraw the entire amount, after following due process of law.

(iii) No order as to costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

jen/mst

To

The Motor Accident Claim Tribunal,  
II Additional Subordinate Judge, Erode.

+1cc to Mr.T.Ravichandran, Advocate SR.No.81314

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.81790

C.M.A.No.3771 of 2011

BS (CO)  
GMY (13/02/2019)



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