

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.07.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1984 of 2007

Jagatha

.... Appellant/Petitioner

Vs.

1.G.Chandran

2.United India Insurance Co.Ltd.,

Rep.by its Divisional Manager,

No.261, J.N.Street,

Pondicherry-1.

.... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 14.06.2007 made in MACTOP No.535 of 2005 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Presiding Officer, Pondicherry.

For Appellant : M/s.Gopika Nambiar
for M/s.Sai & Bharath
For R-2 : Mr.S.Arunkumar

J U D G M E N T

According to the appellant/claimant, on the fateful day, i.e., on 18.06.2003, while she was riding her bicycle from north to south direction and turned towards east in Suthukeni Main Road, a lorry bearing Registration No.TN-PY 01 3515 owned by the first respondent and insured with the second respondent, which was driven by its driver in a rash and negligent manner, hit the appellant/claimant, causing grievous injuries all over her body. Stating so, the appellant/claimant filed a claim petition seeking compensation of Rs.10,00,000/- before the Tribunal.

2.The Tribunal, after analysing the oral and documentary evidence, awarded a sum of Rs.46,000/- with the following break up details:-

Medical expenses	-	Rs. 5,000/-
Transportation expenses	-	Rs. 5,000/-
Loss of earning during the treatment period	-	Rs. 3,000/-
Loss of future earnings on account of permanent disability	-	Rs.28,000/-
Pain and suffering	-	Rs. 5,000/-

Total	-	Rs.46,000/-

3.Claiming that the compensation so awarded by the Tribunal does not commensurate with the injuries sustained by the claimant, she has filed this Civil Miscellaneous Appeal, seeking enhancement.

4.The learned counsel for the appellant/claimant submitted that the amount awarded under each and every heads are on the lower side, which need substantial enhancement. He further submitted that the principles laid down by the Supreme Court has not been followed by the Tribunal, while awarding compensation to the appellant/claimant for the grievous injuries sustained in the accident.

5.Per contra, the learned counsel for the second respondent/Insurance Company submitted that the Tribunal has analysed each and every aspects and awarded the just compensation, based on the witness account and documents produced by both sides and hence, no interference is required.

6.Heard both sides.

7.It is borne out from the records that the Doctor, who reviewing the appellant/claimant, has been examined as PW.2 and in his evidence, he has stated that the claimant suffered the following injuries:-

- "1.Markedly scarred right foot with muscle.
- 2.Marked small muscle wasting of the right foot.
- 3.Marked restriction of movements of toes of right foot.
- 4.Hallux valgus deformity of right great toe.
- 5.Restriction of movements of mid forsal joint with recurrent edema of the right foot accompanied with pain."

8.The Tribunal, based on the above evidence coupled with Exs.P-13 disability certificate and P-6 would certificate and other medical records, has observed that nothing has been elicited, so as to discredit the evidence of PW.2 and taking into account the percentage of disability at 28%, has awarded a sum of Rs.28,000/- towards permanent disability, which is on the lower side, as rightly argued by the learned counsel for the appellant/claimant. Further, the compensation awarded under other conventional heads was not in consonance with the settled principles laid down by this Court as well as by the Supreme Court, which has to be enhanced substantially.

9. This Court is of the opinion that the Motor Vehicles Act is a beneficiary legislation, as per which, the claimant must realize fruits of the decree and the award should not be a paper decree. There is no second thought to the opinion that with the above said discomforts, the claimant has to lead her entire life. Further, the appellant/claimant was aged 20 at the time of accident and the above said discomforts would definitely affect her marriage prospects. If those admitted assumptions are taken into consideration along with the nature of injuries sustained by the claimant together with period of treatment, it has to be inevitably concluded that the award passed by the Tribunal is inadequate and it needs significant enhancement.

10.Thus, in the opinion of this Court, awarding a slight enhancement on all the heads, would serve the purpose, which will be equating with the injuries sustained by the claimant. The break up details of such enhancement would be thus:-

Medical expenses	-	Rs.	5,000/-
Transportation expenses	-	Rs.	5,000/-
Loss of earning during the treatment period	-	Rs.	3,000/-
Loss of future earnings on account of permanent disability (Rs.2000/- x 28%)	-	Rs.	56,000/-
Pain and suffering	-	Rs.	10,000/-
Loss of amenities	-	Rs.	20,000/-
Future medical expenses	-	Rs.	5,000/-
Total	-	Rs.	1,04,000/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed, by enhancing the quantum of compensation from Rs.46,000/- to Rs.1,04,000/-, which is payable by the second respondent/Insurance company with interest at the rate of 7.5% per annum, from the date of petition till the date of deposit, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment.

The second respondent/Insurance Company is not liable to pay any interest on the compensation amount, in respect of the default period (if any), for which, condonation of delay has been ordered. On such deposit being made, the Tribunal shall transfer the compensation amount to the savings bank account of the claimant herein, through RTGS, within one week thereafter. The claimant shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal, Principal Sub Judge,
Presiding Officer, Pondicherry.

2. The Section Officer,
V.R. Section, High Court, Madras.

+1 cc to M/s.Sai & Bharath Advocate sr61815

+1 cc to Mr.S.Arunkumar Advocate sr61495

C.M.A.No.1984 of 2007

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