

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1057 of 2008

M.Amirtha Packiya Leela ... Appellant/Petitioner

Vs.

1.B.Janakiraman

2.The New India Assurance Co. Ltd.,
No.38, Anna Salai,
Chennai 600 002. ...Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.1902 of 2001 dated 15.06.2007 on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj
For Respondent 1 : Exparte
For Respondent 2 : Mr.G.Anandan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant / claimant, as against the Judgment and Decree in M.C.O.P.No.1902 of 2001 dated 15.06.2007 on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2.The case in brief, is as follows:

On 20.01.2000 in the early morning, the claimant / appellant herein was travelling as a passenger in a Tata Sumo Van bearing Registration No. TN 01 Q 1985 in the GST Road, Chennai, belonging to the first respondent and insured with the second respondent Insurance Company. Due to the rash and negligent driving of the driver of the van, it dashed against a Timber Lorry which was proceeding in front of the Tata Sumo Van. Due to the said impact, the claimant suffered grievous injuries. Contending that the accident had happened only due to the negligent driving of the Tata Sumo Van, by its driver, a claim petition in M.C.O.P.No.1902 of 2001 was filed by the claimant for a sum of Rs.4,50,000/- as compensation.

3.The Tribunal based on the evidence and documents produced, has awarded a total compensation of Rs.1,77,400/- with interest at the rate of 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the same, the claimant has filed this Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant / claimant has submitted that the Tribunal has erred in awarding only a meagre sum of Rs.1,77,400/- as against the claim of Rs.4,50,000/- made by the appellant / claimant. The Tribunal ought to have fixed the disability of the appellant at 100% as per the second schedule of the Motor Vehicles Act.

5.Per Contra the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal, based on the materials and evidence available on record, has awarded the just compensation. He further submitted that the Tribunal has analysed the evidence of the Doctor/P.W.2 in detail and has correctly arrived at the disability and hence, the judgment of the Tribunal does not require any interference.

6.This Court has considered the said submissions made by the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.The Tribunal has analysed the disability suffered by the claimant by way of P.W.2 and through him, Ex.P11 Audio Test Report has been marked. It is seen that P.W.2 is not a Doctor, but an expert in Audiology. The Tribunal placing reliance upon the evidence of P.W.2, clubbed with the other documents, came to the conclusion that on decibel basis, the claimant could hear only threefold strong pitch whereas a normal person could hear a single fold pitch. Therefore, the disability was fixed at 60% and on that score, the quantum has been calculated. Since there are contradictions in respect of the claimant's oral testimony and in the claim petition, the Tribunal fixed the annual income of the claimant at Rs.15,000/-, adopted the multiplier of 17 and awarded a sum of Rs.1,53,000/- for 60% disability. Further the Tribunal has awarded sums of Rs.9,367/-, Rs.5000/-, Rs.10,000/- towards Medical Expenses, Grievous Injuries and Loss of Future Earning on account of permanent disability, respectively.

8.However, the Tribunal has failed to take note of one important aspect. With the hearing discomforts, as stated supra, the claimant has to lead her entire life. In these circumstances, awarding a sum of Rs.3,600/-, Rs.5000/- and Rs.14,000/- towards Transportation, Extra Nourishment and Pain and Suffering, would meet the ends of justice. If the said sums are added, the total compensation works out to Rs.1,99,967/- @

Rs.2,00,000/-. Thus, the appellant / claimant is entitled to the modified compensation of Rs.2,00,000/-.

9.It is made clear that only for the compensation of Rs.1,77,400/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.22,600/- the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

10.The Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent / Insurance Company is directed to deposit the modified compensation as above, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The VI Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1 cc to Mr.A.Shanmugaraj, Advocate, sr.67373

+1 cc to Mr.G.Anandhan, Advocate, sr.66875.

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