

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2978 of 2005

Jayalakshmi

.. Appellant

Vs.

1. Muthulakshmi

(R1 set exparte before the Tribunal)

2. The Divisional Manager,
United India Insurance Co. Ltd.,
Vellore.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.01.2005 made in M.C.O.P.No.214 of 2001, on the file of the Motor Accidents Claims Tribunal-cum-Principal Subordinate Judge, Thiruvananthapuram.

For Appellant : Mr.R.Thirugnanam
For R2 : Mrs.R.Sreevidya

J U D G M E N T

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal, seeking enhancement of the same.

2.The case in brief, is as follows:

On the fateful day, i.e., on 02.05.2000, at about 10.15 hours, the appellant/claimant was travelling in a van bearing Registration No.TN55-9734 belonging to the first respondent and insured with the second respondent insurance company. When the van was proceeding towards Kovilur, due to rash and negligent driving on the part of the driver, the said van capsized. As a result of the same, the appellant sustained grievous injuries, for which, she filed a claim petition, claiming a compensation of Rs.1,00,000/-. The Tribunal, after considering the oral and documentary evidence, awarded a compensation of Rs.29,000/- with interest at 9% per annum from the date of petition. Challenging

the same, the appellant is before this Court with the present appeal seeking enhancement of the compensation awarded by the Tribunal.

3.The learned counsel for the appellant/claimant submitted that the Tribunal has awarded Rs.14,400/- towards "loss of income due to permanent disability", which is inadequate. The learned counsel further submitted that the compensation awarded under other heads are very meagre and the same have to be enhanced substantially.

4.Per contra, the learned counsel for the second respondent/ insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record.

6.This is the claimant's appeal seeking enhancement of the compensation awarded by the Tribunal and hence, there is no requirement for this Court to go into the question on negligence and the liability of the second respondent insurance company to pay compensation.

7.The appellant/claimant herself examined as P.W.1, who deposed that at the time of accident, she was 27 years old and was earning Rs.100/- per day as a coolie; due to the impact of the accident, she had sustained bone fracture and multiple injuries all over the body. The doctor, who treated the appellant/claimant, was examined as P.W.3. According to him, the appellant/claimant sustained 30% permanent disability; Ex.P2 is the wound certificate; and Ex.P5 is the disability certificate. However, the Tribunal has fixed the monthly income of the injured at Rs.800/- (Rs.40/- x 20 days), which appears to be on the lower side and the same is hereby enhanced to Rs.1,000/- per month. Though PW3 doctor assessed the permanent disability sustained by the appellant/claimant at 30%, the Tribunal has erred in taking only 10%, which seems to be unfair and unreasonable and hence, the same is hereby modified to 30% as assessed by the doctor. However, the multiplier of 15 adopted by the Tribunal is based on the principles of law and the same remains unaltered. As such, the compensation awarded by the Tribunal under the head "loss of income due to permanent disability" is enhanced to Rs.54,000/- [Rs.1000 x 12 x 15 x 30%]. In view of the same, Rs.5,000/- awarded by the Tribunal towards grievous injuries is unwarranted and the same is hereby deleted. Further, the Tribunal has awarded one year salary of Rs.9,600/- towards loss of earning capacity, which is hereby

enhanced to Rs.12,000/- as this Court fixes the salary of the injured at Rs.1,000/- per month.

8. That apart, the Tribunal has not awarded any amount towards pain and suffering, extra nourishment, transport and attendant charges. Considering the nature of the injuries and the percentage of permanent disability sustained by the injured and also keeping in view the period of treatment taken by her during past and future, a sum of Rs.5,000/- is hereby awarded towards pain and suffering, besides awarding Rs.1,000/- each towards extra nourishment and transport charges and Rs.2,000/- towards attendant charges. Accordingly, the compensation of Rs.29,000/- awarded by the Tribunal is enhanced to Rs.75,000/-, the breakup details of which, reads as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability at 30% (1000x12x15x30/100)	14,400/-	54,000/-
Grievous injuries	5,000/-	-
Loss of earning capacity	9600/-	12,000/-
Pain and suffering	-	5,000/-
Extra nourishment	-	1,000/-
Transportation	-	1,000/-
Attendant charges	-	2,000/-
Total	29,000/-	75,000/-

However, the enhanced sum of Rs.46,000/- (75,000 - 29,000) shall carry interest only at 7.5%p.a. from the date of filing of this appeal.

9. In view of the above, the second respondent/Insurance Company is directed to deposit the entire compensation amount, with interest and costs, 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 Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

10. Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

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To

1. The Motor Accidents Claims Tribunal,
The learned Principal Sub-ordinate Judge,
Thiruvanamalai.

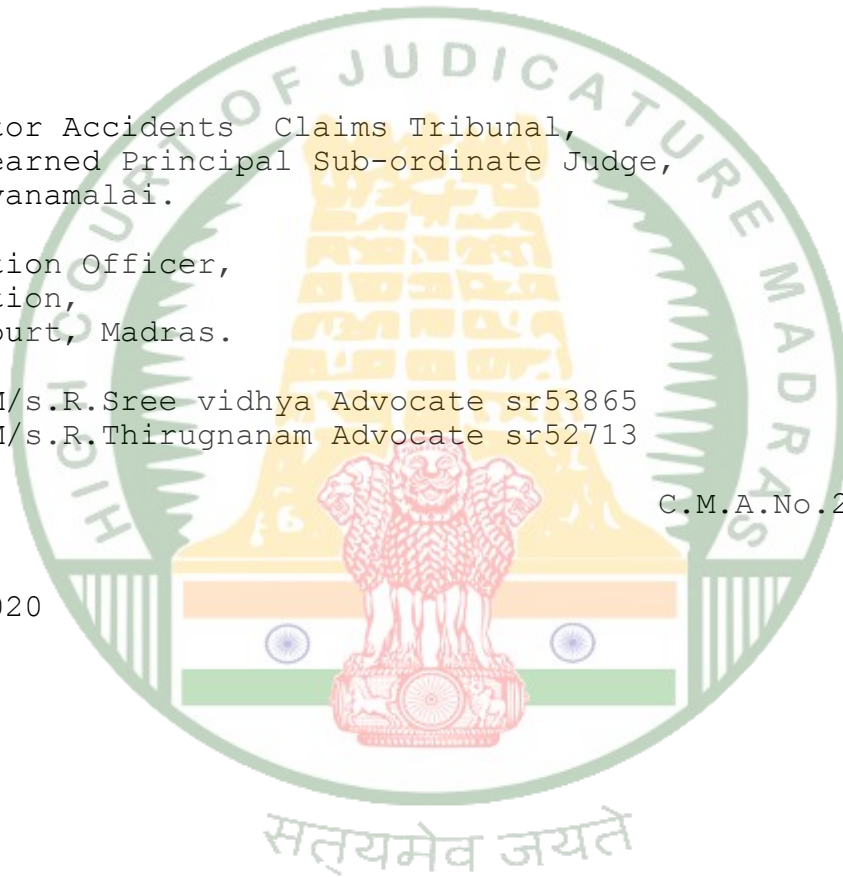
2. The Section Officer,
VR Section,
High Court, Madras.

+1 cc to M/s.R.Sree vidhya Advocate sr53865

+1 cc to M/s.R.Thirugnanam Advocate sr52713

G.M.A.No.2978 of 2005

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