

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE.R.HEMALATHA

CMA.NO.1310 OF 2009

Bharathy

... Appellant/Claimant

Vs.

1. P.Vijyakumar
2. Gowrishankar
3. United India Insurance Company Limited,
448-A, Dr. Nanjappa Road, Coimbatore-18.

... Respondents/Respondents

Prayer:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 31.10.2007 passed in MCOP No.120/2007 by the Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.2, Gopichettipalayam.

For Appellant : Mr.S.Kamadevan

For Respondents : Mr.S.Arunkumar (for R3)
No appearance for R1 and R2

JUDGMENT

The appellant is the claimant in MCOP No.No.120/2007 on the file of the Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.2, Gopichettipalayam.

2. The appellant/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- for the injuries sustained by her in a road accident that took place on 19.05.2005.

3. The case of the appellant/claimant is that on 19.05.2005, at about 2.00 p.m. she was travelling as a pillion rider in a two wheeler bearing registration No.TN-40-Z-4037, which was ridden by one Kesavaraj. When the two wheeler was nearing Suriyagandhi Bridge, Kurambapalayam, a speeding Mahindra

& Mahindra LMV Maxicab bearing registration No.TN-38-K-5656 hit the two wheeler, as a result of which she sustained injuries all over her body. According to the claimant, the rash and negligent driving of the driver of the Maxi cab was the cause of accident and that since the owner of the Maxi Cab(2nd respondent) insured his vehicle with the United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to her.

4. The owner and the driver of the Maxi Cab remained absent before the Tribunal and therefore, they were set exparte. The United India Insurance Company Limited contested the claim petition.

5. The Additional District Judge/ Motor Accident Claims Tribunal, Fast Track Court No.2, Gopichettipalayam, after analysing the evidence on record, awarded a compensation of Rs.1,26,000/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal seeking enhancement of compensation.

6. Mr.S.Kamadevan, learned counsel appearing for the appellant/claimant contended that though Dr.Thambiraj (PW2) assessed the partial permanent disability of the claimant as 27%, the Tribunal had awarded a very meagre amount of Rs.25,000/- towards partial permanent disability. He also drew the attention of this court to the photograph (Ex.P9) and contended that the claimant was aged 18 years on the date of accident and on account of the accident, her marriage prospects got diminished. He therefore, prayed for enhancement of compensation.

7. Mr.S.Arunachalam, learned counsel appearing for the United India Insurance company contended that the Tribunal after analysing the well laid principles of law, which were in vogue at the time of passing of the order had awarded a just compensation and hence, the same need not be disturbed at this stage.

8. A perusal of the discharge summary (Ex.P8) clearly shows that the claimant had sustained fracture of "Grade III B Compound Fracture of both bones right leg and closed commuted fracture shaft of right femur" and she was also admitted as an inpatient from 19.05.2005 to 08.06.2005. She was aged 18 years on the date of accident. Dr.Thambiraj (PW3) had assessed the partial permanent disability of the claimant as 27%. The accident took place in the year 2005. Accordingly a sum of Rs.54,000/- (27x2000) is awarded towards " partial permanent disability" . It is to be noted that there is no functional

disability warranting multiplier method. In the facts and circumstances, the compensation awarded by the Tribunal under various heads is enhanced as detailed hereunder.

Sl.No	Heads	Amount
1	Partial permanent disability (27x2000)	54,000
2	Pain and sufferings	25,000
3	Extra nourishment	10,000
4	Transportation	5,000
5	Attender's charges	5,000
6	Loss of amenities	50,000
7	Medical expenses	96,000
8	Damage to clothes	1,000
9	Future medical expenses	20,000
	Total	2,66,000

A sum of Rs.2,46,000/- would carry interest at the rate of 7.5% per annum (Future medical expenses of Rs.20,000/- would not carry any interest), from the date of claim petition till the date of deposit.

9. In the result,

(i) The Civil miscellaneous appeal is partly allowed.
No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,26,000/- to Rs.2,66,000/-.

(iii) The 3rd respondent/ The United India insurance Company Limited is directed to deposit the enhanced compensation amount of Rs.2,66,000/- with interest at the rate of 7.5% p.a. on Rs.2,46,000/- (future medical expenses Rs.20,000 would not carry any interest) from the date of claim petition till the date of deposit (less the amount already deposited by them) within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the United India Insurance company Limited, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mst

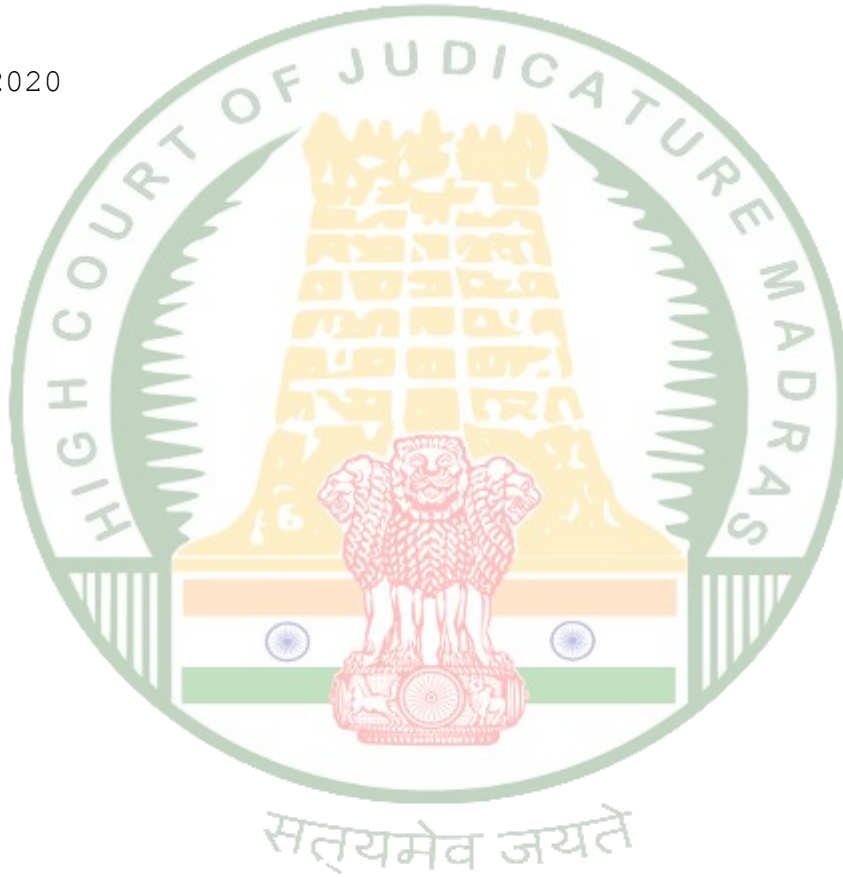
To

1. Additional District Judge/
Motor Accident Claims Tribunal,
Fast Track Court No.2,
Gopichettipalayam.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.81082
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.81209

CMA.No.1310 of 2009

BS (CO)
CS/05/06/2020



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