

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.119 of 2011

D.Dhanalakshmi

...Appellant/ Petitioner

Vs.

1.Mrs.Savitha Sriram

2.The United India Insurance Co. Ltd.,
No.38 Anna Salai,
Chennai -2. ...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 09.08.2010, in M.C.O.P.No. 113 of 2004 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Chengalpattu.

For Appellant : Ms.Y.Jayanthi Bhaskar

For Respondents : Mr.G.Sethuraman for R1
Mr.T.Ravichandran for R2

JUDGMENT

The appellant is the claimant in M.C.O.P.No.113 of 2004, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Chengalpattu. She has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 19.11.2003.

2. The brief case of the appellant/claimant is as follows:

On 19.11.2003, at about 11.00 am, the injured was walking by the side of Venkatachala Mudhali Street, Chennai. At that time, a car bearing Registration No. TN 07 V 7897, belonging to the first respondent herein, hit her, as a result of which, she sustained grievous.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the car bearing Registration No. TN 07 V 7897 was the cause of the accident, and that, since, the said car was insured with the second respondent herein, both the first and second respondents herein, are jointly and severally liable to pay compensation of Rs.5,00,000/- to him.

4. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,11,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard both sides and perused the materials available on record.

6. The learned counsel appearing for the appellant/claimant submitted that on the date of the accident, the appellant/claimant was a milk vendor, earning a sum of Rs.200/- per day. In the absence of any evidence, the notional income of the appellant/claimant is fixed as Rs.4,000/- per month. Since she had sustained fracture in left knee and her right foot is dislocated, she would not have been in a position to attend to her work at least for five months. Therefore, the loss of earning is calculated as Rs.20,000/- (Rs.4,000/- x 5).

7. The Tribunal has awarded Rs.60,000/- under the head 'Continuing permanent disability'. A perusal of Disability Certificate (Ex.P7) and X-ray (Ex.P8) shows that the appellant/claimant has sustained multiple fracture and Dr.Kannan Isaq (PW2) has assessed the percentage of disability as 40%. Eventhough, PW2 has admitted variation in disability to the extent of 5% from doctor to doctors, this Court is of the considered view that, awarding a sum of Rs.80,000/- towards 'Continuing permanent disability' would meet the ends of justice. The Tribunal has not awarded any compensation under the head loss of amenities and therefore, the appellant/claimant is entitled to a sum of Rs.10,000/- for the same. Since the appellant/claimant was treated as an inpatient for two times, the amount awarded under the head 'extra nourishment' is enhanced from Rs.3,000/- to Rs.5,000/-.

8. Accordingly, the award of the Tribunal in M.C.O.P.No. 113 of 2004 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of earning	Rs.12,000/-	Rs.20,000/-
2.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
3.	Extra nourishment	Rs.3,000 /-	Rs.5,000 /-

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
4.	Disability	Rs.60,000/-	Rs.80,000/-
5.	Loss of amenities	NIL	Rs.10,000/-
6.	Medical Attendance	Rs.6,000/-	Rs.6,000/-
7.	Damages for mental agony and pain and sufferings	Rs.25,000/-	Rs.25,000/-
	Total	Rs. 1,11,000/-	Rs.1,51,000/-

The compensation awarded by the Tribunal is enhanced from Rs.1,11,000/- to Rs. 1,51,000/- which shall carry interest at the rate of 7.5% per interest.

9. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,11,000/- to Rs. 1,51,000/-.

(iii) The second respondent herein - United India Insurance Company Limited is directed to deposit the entire compensation of Rs.1,51,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 113 of 2004, dated 09.08.2010, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Chengalpattu within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

सत्यमेव जयते

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Court,
Chengalpattu.

+1cc to Mr.G.Sethuraman, Advocate SR.No. 11797

+1cc to Mr.D.Baskaran, Advocate SR.No. 12111

C.M.A.No.119 of 2011

A.SK (21/03/2019)