

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2848 of 2010

1.M.Vasanthi (Died)

2.K.Mani

3.Pushpa

4.Sanjeividaran

.. Appellants

(Appellants 2 to 4 are brought
on record as LR's of the deceased
sole appellant vide Order dated
08.02.2019 made in C.M.P.No.
20796 of 2018 in C.M.A.No.2848/2010)

Vs.

1.Ayya Pillai, Rohini Sadanam,
Parasuvikkal,
Thiruvananthapuram-695 002.

2.The New India Assurance Company Ltd.,
No.45, Moore Street
Chennai-600 001.

.. Respondents/
Respondents

(1st respondent remained ex-parte
before the Tribunal. Hence, his
presence may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of Motor Vehicles Act, 1988, against the judgment and decree
dated 20.10.2009 made in M.C.O.P.No.3179 of 2006 on the file of
Motor Accident Claims Tribunal, II Court of Small Causes,
Chennai.

For Appellant : Mr.N.M.Elumalai

For Respondents: R1- Ex Parte

: R2-Mr.S.Jayasankar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 20.10.2009 made in M.C.O.P.No.3179 of 2006 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3179 of 2006 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. She filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by her in the accident that took place on 22.06.2005.

3.On 22.06.2005 at about 05.00 PM, when the appellant was travelling as a pillion rider in the Motor cycle bearing Registration No.TN-22-R-7439 driven by her husband from Chennai to Poonamallee near Nerukunram Shymala Petrol Bunk, a Lorry bearing Registration No.Kl-01-C-0036, driven by its driver in a rash and negligent manner, dashed against the Motor Cycle and caused the accident. The 1st respondent is the owner of the lorry and the 2nd respondent is the insurer.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent to pay a sum of Rs.1,97,412/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.During the pendency of the present Appeal, the appellant has died and the legal heirs of the deceased appellant has been impleaded vide order of this Court dated 08.02.2019 made in C.M.P.No.20796 of 2018 in C.M.A.No.2848/2010.

6.Heard Mr.N.M.Elumalai, learned counsel appearing for the appellants and Mr.Jayakumar, learned counsel appearing for the second respondent and perused the materials available on record.

7.A perusal of the records shows that the claimant has sustained head injury and grievous injuries all over the body and operations were done for her and skin grafting was done for her. Dr.J.R.R.Thiyagarajan has assessed the partial permanent disability as 85% and the Tribunal has reduced the same to 45%

and awarded a sum of Rs.67,500/- towards "disability" (Rs.1,500/- per percentage of disability). Considering the nature of injuries and the year of the accident, this Court is inclined to enhance the same to Rs.2000/- per percentage of disability, which comes to a sum of Rs.90,000/- (Rs.2,000 X 45%). It is seen from the claim petition, at the time of accident, she was aged about 35 years and was working as Chittal and was earning Rs.150/- per day (Rs.4,500/- per month). The appellant has not filed any document to prove her age and income. The appellant is a house wife and as per the ruling in 2009 (1) TNMAC Page 671, the income of house wife is fixed at Rs.3,500/- per month. Therefore, the Tribunal has awarded a sum of Rs.14,000/- towards "loss of income". Due to the injuries and disabilities sustained in the accident, she would have been disabled from amending per avocation for a period of 4 months and hence, the amount of Rs.3,500/- fixed by the Tribunal is increased to Rs.5,000/- for 4 months and accordingly a sum of Rs.20,000/- is awarded by this Court. The Tribunal has awarded a sum of Rs.2,000/- each towards "Extra Nourishment" and "Transportation" and the same is hereby enhanced to Rs.10,000/- each. The Tribunal has awarded a sum of Rs.30,000/- towards "Pain and Sufferings" and the same is hereby enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards "attender charges". This Court is inclined to award a sum of Rs.10,000/- for the same. The amount awarded by the Tribunal under other heads are confirmed hereby. The award passed by this Court under various heads is extracted hereunder:

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of earnings	(3,500 x 4) 14,000/-	(5,000 x 4) 20,000/-	enhanced
2.	Transportation	2,000/-	10,000/-	enhanced
3.	Extra Nourishment	2,000/-	10,000/-	enhanced
4.	Damages to clothes	1,000/-	1,000/-	confirmed
5.	Medical Expenses	9,912/-	9,912/-	confirmed
6.	Future Medical Expenses	50,000/-	50,000/-	confirmed
7.	Other expenses	1,000/-	1,000/-	confirmed

8.	Disability	67,500/-	90,000/-	enhanced
9.	Pain and Sufferings	30,000/-	40,000/-	enhanced
10.	Loss of amenities	10,000/-	10,000/-	confirmed
11.	Loss of expectations	10,000/-	10,000/-	confirmed
	Total	Rs.1,97,412/-	Rs.2,51,912/-	enhanced by Rs.54,500/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,97,412/- is hereby enhanced to Rs.2,51,912/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Claimants 2 to 4 are entitled to equal share. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn, if any. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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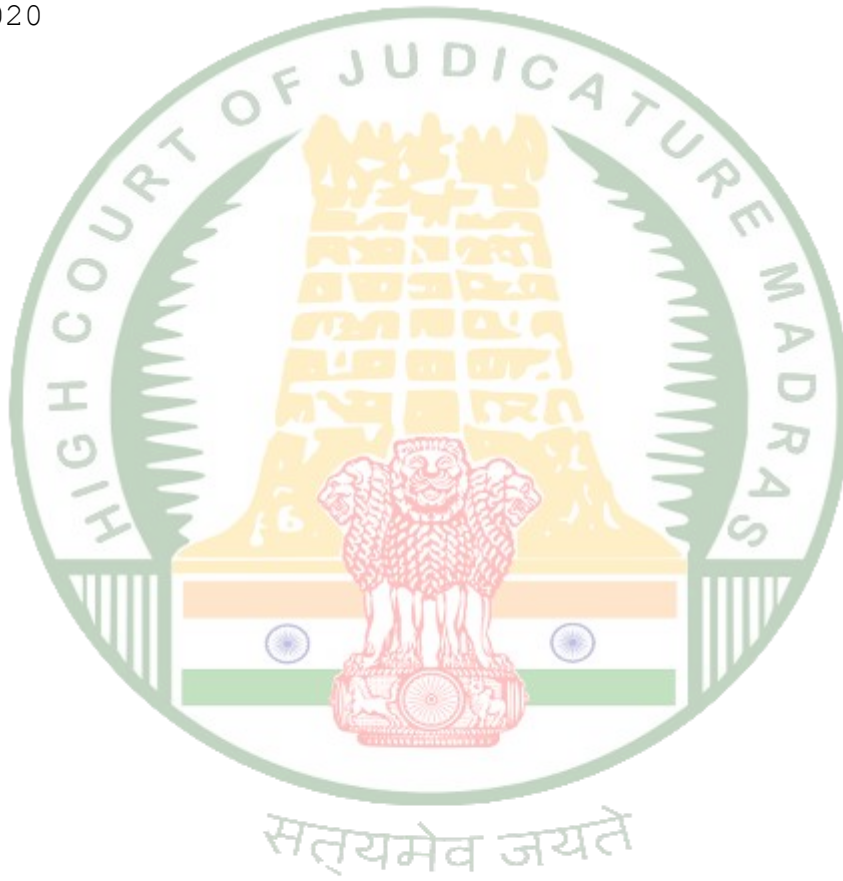
1.II Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

Copy to
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.N.M.Elumalai Advocate sr101917

C.M.A.No.2848 of 2010

gj (co)
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