

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.955 of 2009

S.Rashiya Begam

... Appellant/Claimant

..Vs..

1.K.Senthilkumar

2.IFFCO - TOKIO-General

Insurance Co. Ltd.,

Tulsi Chambers,

3rd Floor, 195, T.V Swamy Road(W)

R.S Puram, Coimbatore. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.11.2008 in M.C.O.P.No.246 of 2007 on the file of the Motor Accident Claims Tribunal / Principal District Court, Erode.

For Appellant : N.Manokaran

For 1st Respondent : No Appearance

For 2nd Respondent : N.Vijayaraghavan

JUDGMENT

The appellant is the claimant in M.C.O.P No.246 of 2007 on the file of the Principal District Judge, Erode. She filed the claim petition under Section 166 (1) of the Motor Vehicles Act praying for a compensation of Rs.3,00,000/- for the injuries sustained by her in a road accident that took place on 01.12.2006.

2. The case of the claimant is that on 01.12.2006 at about 1.45 p.m. when she was walking along Mettur Road, Erode Town, a speeding motor-cycle bearing Registration bearing No.TN 33 AF 4296 belonging to the 1st respondent and insured with the 2nd respondent hit her, as a result of which, she fell down and sustained injuries all over her body. Her further contention is that she took treatment as an inpatient at Harini Hospital, Erode and also had undergone a surgery for the fracture sustained by her in her hand and

thighs. It is her further contention that the rash and negligent driving of the rider of the two-wheeler was the cause of the accident and that since the said two-wheeler was insured with the 2nd respondent/IFFCO-TOKIO General Insurance Company Ltd., Coimbatore, both of them are jointly and severally liable to pay compensation to the claimants.

3. Both the respondents contested the claim petition and the learned Principal District Judge, Erode, after analysing the evidence on record, awarded a compensation of Rs.43,489/- to the claimants with interest at the rate of 7.5% per annum from the date of the claim petition.

4. Not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant has filed the present appeal.

5. Mr.N.Manokaran, the learned counsel appearing for the appellant contended that though the petitioner sustained partial permanent disability of 20%, the Tribunal had awarded a meagre amount of Rs.20,000/-. His specific contention is that a sum of Rs.72,000/- should be awarded for loss of income after applying multiplier method.

6. Per contra, the learned counsel appearing for the 2nd respondent/ IFFCO-TOKIO General Insurance Company Ltd., contended that the Tribunal has awarded the compensation based on the prevailing principles of law at the time of passing the order, and therefore, there is no necessity to upset the award passed by the Tribunal.

7. In the instant case, it is contended that the claimant was running a snack shop and was earning a sum of Rs.7,000/- per month. Dr.N.Venkatesan (PW2) has assessed the partial permanent disability at 20%. A perusal of partial permanent disability certificate, Ex.A11 shows that the claimant has sustained fracture on her right thigh and right hand wrist. However, it cannot be contended that the claimant was permanently disabled from doing her work as before, on account of the accident since she was running a snack shop. Therefore, as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343, the assessment of compensation on the head of loss of earning capacity need not be calculated by adopting multiplier method. Therefore, taking into consideration the year of accident, I hold that a sum of Rs.40,000/- should be awarded for partial permanent disability. Apart from this, the claimant is entitled to a sum of Rs.25,000/- for pain and sufferings, a sum of Rs.5,000/- for extra nourishment and a sum of Rs.23,489/- towards medical expenses.

8.As far as the loss of income is concerned, since the claimant had undergone a surgery, she would not have been in a

position to do her work at least for three months and therefore, a sum of Rs.12,000/- (Rs.4,000/- x 3) is awarded towards loss of income. Apart from this, the claimant is entitled to a sum of Rs.5000/- towards transportation charges and thus, she is totally entitled to Rs.1,10,489/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition.

9. In the result,

(i) The appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.43,489/- to Rs.1,10,489/-

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second respondent, the IFFCO - TOKIO- General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.1,10,489/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Principal District Court,
Erode.

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

+1cc to M/s.N.Manokaran, Advocate SR.76350

+1cc to M/s.N.Vijayaraghavan, Advocate SR.76294

C.M.A.No.955 of 2009

GP(CO)
CB(15/06/2020)