

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1925 of 2011

Arokiyameri

...Appellant

Vs.

1.Amaresan

2.The Divisional Manager,  
United India Insurance Co. Ltd.,  
No.46, Katpadi Road, Vellore.

.... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.12.2006, in M.C.O.P.No. 561 of 2002 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Judge, Tiruvannamalai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.P.Sankara Narayanan for R2.

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 561 of 2002, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Tiruvannamalai. She has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by her in a road accident that took place on 09.07.2001.

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

On 09.07.2001, at about 05.20 pm, while the appellant/claimant was trying to board into the first respondent's bus bearing Registration No. TN 25 C 4840, near Thirukovilur bus stand, the driver of the bus took the bus in a rash and negligent manner, and due to that, the appellant/claimant was thrown out of the bus and sustained grievous injuries. In the said accident, the appellant/claimant's right leg below the knee was completely crushed by the bus tyre. The right leg below the knee of the appellant/claimant was amputated and the appellant/claimant became permanently disabled and she could

not do any work and earn as before. According to the appellant/claimant, the rash and negligent driving of the driver of the said bus was the cause of the accident, and that, since, the said bus belonging to the first respondent was insured with the second respondent, both the first and second respondents, are jointly and severally liable to pay compensation of Rs.3,00,000/- to her.

3. The learned Tribunal, based upon the oral and documentary evidence, held that the accident has taken place only due to the rash and negligent driving of the driver of the said bus and directed the first and second respondents to jointly and severally pay a sum of Rs.80,000/- 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.

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

5. Quantum of compensation: Dr.Raveendran (PW2) assessed the disability at 80%. However, the Tribunal stated that under the schedule of Workmen Compensation Act, the amputation below knee, accounts to 50% disability and fixed the disability at 50%. The Tribunal based upon the answer elicited in the cross examination of Arokiyameri (PW1), fixed the aged of the injured as 55 and the same is hereby confirmed. However, the appellant/claimant is said to have worked as 'coolie' and since her right leg below the knee was amputated, she would not have been in a position to continue her work as 'coolie'. Therefore, the disability must be treated as 'functional disability' and multiplier method should be adopted. Since, the accident took place in the year 2001, the notional income of the appellant/claimant is fixed as Rs.2,400/-. As per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 10% should be added towards the future prospects of the appellant/claimant. The proper multiplier to be adopted in the instant case is 11 according to the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The disability fixed at 50% by the Tribunal is taken as it is.

Calculation:

Notional income = Rs.2,400/-

10% Future Prospects = Rs.240/-

Total = Rs.2,400 /- + Rs. 240 = Rs.2,640/-

Loss of earning capacity

$$= \text{Rs. } 2,640 \text{ /-} \times 11 \times 12 \times 50/100$$

$$= \text{Rs. } 1,74,240 \text{ /-}$$

Therefore, a sum of Rs.60,000/- awarded under the head 'future damages' is set aside and a sum of Rs.1,74,240/- is awarded under the head 'loss of earning capacity'.

6. Since, the appellant/claimant took treatment in Thirukovilur Government Hospital and then at Jipmer Hospital, she is entitled to a sum of Rs.5,000/- and Rs.5,000/- towards 'attender's charges' and 'extra nourishment' respectively. She is also entitled to a sum of Rs.10,000/- towards 'loss of amenities'. A sum of Rs.5,000/- awarded under the head 'pain and sufferings' is enhance to Rs.10,000/-. All the other heads awarded by the Tribunal are hereby confirmed.

7. Accordingly, the award of the Tribunal in M.C.O.P.No. 561 of 2002 is modified as follows:

| Sl. No. | Particulars                                                | Amount granted by the Tribunal | Amount granted by this Court |
|---------|------------------------------------------------------------|--------------------------------|------------------------------|
| 1       | Loss of earning capacity                                   | NIL                            | Rs.1,74,240/-                |
| 2.      | Future damages                                             | Rs.60,000/-                    | NIL                          |
| 3.      | Pain and sufferings                                        | Rs.5,000 /-                    | Rs.10,000 /-                 |
| 4.      | Medical expenses                                           | Rs.5,000/-                     | Rs.5,000/-                   |
| 5.      | Loss of amenities                                          | NIL                            | Rs.10,000/-                  |
| 6.      | Mental agony for becoming handicapped                      | Rs.5,000/-                     | Rs.5,000/-                   |
| 7.      | Transport expenses, attender's charges and loss of income. | Rs.5,000/-                     | Rs.10,000/-                  |
| 8.      | Extra nourishment                                          | NIL                            | Rs.5,000/-                   |
|         | Total                                                      | Rs. 80,000/-                   | Rs.2,19,240/-                |

The compensation awarded by the Tribunal is enhanced from Rs.80,000/- to Rs.2,19,240/- which shall carry interest at the rate of 7.5% per annum.

8. 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.80,000/- to Rs.2,19,240/-.

(iii) The second respondent herein - United India Insurance Company Limited is directed to deposit the entire enhanced compensation of Rs.2,19,240/- (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. 561 of 2002, dated 12.12.2006, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Thiruvannamalai 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.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mbi

To

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

+1cc to M/s.P.Sankaranarayanan, Advocate Sr.16676  
+1cc to M/s.M.Malar, Advocate Sr.16560

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