



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2019

Pronounced on : 25.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3021 of 2011

Lakshmi

... Appellant / Claimant

Versus

1. M.Manickam

2. M.Selvaraj

3. United India Insurance Co., Ltd.,
Rep. By its Manager, Muthiah Complex,
2nd Floor, 1170, Mettur Road,
Erode - 638 011.

4. United India Insurance Co., Ltd.,
By its Manager, SRS Towers,
Mettur Main Road, Bhavani 638 301.

... Respondents 1 to 4 /
Respondents 1 to 4

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as amended by Act 54 of 1994, to set aside the order dated 28.04.2011 made in M.C.O.P.No.232 of 2010 on the file of the Motor Accident Claims Tribunal Cum Fast Track Court No.4, Bhavani, Erode District.

For Appellant : Mr.C.Kulanthaivel

For Respondents:Ex-parte before the Tribunal(for R1& R2)

: Mr.T.Ravichandran for R3

: Given up (for R4)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant for enhancement of compensation awarded by the Motor Accident Claims Tribunal Cum Fast Track Court No.4,



Bhavani, Erode District in award dated 28.04.2011 made in M.C.O.P.No.232 of 2010.

2.The Tribunal has awarded a sum of Rs.1,33,195/- as total compensation for the injuries sustained by the claimant. Not being satisfied with the quantum of compensation, the appellant/claimant has come forward with the present appeal seeking enhancement of compensation.

3.Before the Tribunal, on the side of the claimant, the claimant examined herself as P.W.1 besides examining one Dr.R.Krishnasamy as PW.2 and seventeen documents were marked as Exs.P1 to P17. On the sides of the respondents, neither oral nor documentary evidence was adduced.

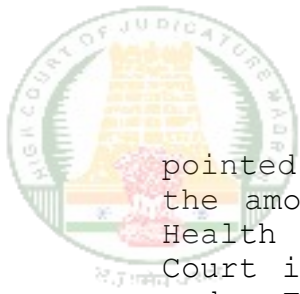
4. Regarding the manner of the accident and rash & negligence on the part of the first respondent/driver of the vehicle, there is no dispute in this appeal.

5.According to the learned counsel for the appellant/claimant, PW.2/Doctor has examined the claimant/victim and stated that she has suffered a fracture on the left leg and hip and there is a mal-union of the above fractures. Further, he had deposed that there are plates and screws implanted in the leg and the victim cannot bend the said part to a considerable extent. Therefore, he stated that the claimant could not do any work in view of the fractures and the mal-union of the bones and she may not be able to attend to her domestic chores and also her avocation.

6.Further, according to the learned counsel for the appellant/claimant, the Tribunal also did not properly consider the deposition of PW.3, Dr.Loganathan of Ganga Hospital, Coimbatore, who gave treatment to the claimant for the injuries sustained in the accident. However, the Tribunal erroneously concluded that since the appellant had already received compensation from Star Health Insurance Scheme, he is not entitled to the medical expenses incurred in Ganga Hospital, Coimbatore from his pocket. The fact that the claimant incurred certain amount is established by production of bills, which are not covered by the Star Health Insurance Policy. Hence, the Insurance company is liable to pay the balance amount of medical expenses to the victim, which was not considered by the Tribunal.

7.On the above contention, this Court heard the counsel for the insurance company and perused the materials placed on record.

8.It is claimed that the claimant had incurred the medical expenses under Ex.P17 and paid it from her pocket. As rightly



pointed out by the counsel for the claimant, the claimant paid the amount under Ex.P17 over and above the amount paid by Star Health Insurance Company under the scheme. Therefore, this Court is of the view that the amount incurred by the claimant under Ex.P17, medical bills issued by Ganga Hospital has to be reimbursed to the claimant in the form of compensation, which the Tribunal failed to consider.

9.It is seen from the deposition of PW.2, the claimant has undergone three surgeries in both the legs and also on the hip, due to which there is shortening of 10 degree angular movement of her body. Therefore, the Doctor has assessed her disability at 55%. Moreover, the Doctor deposed that she has also suffered shortening on leg rotation movement, due to the defect and she could not perform her nature calls as usual, which is evident from Ex's.P12 to P14.

10.Therefore, this Court is of the considered view that this is fit case to adopt multiplier method. Since, the injuries sustained by the victim in the accident is a functional disability, the disability is fixed at 30%. Considering the permanent functional disability of the claimant, this Court feels that compensation amount under the head 'disability and loss of income' has to be awarded. Accordingly, fixing the monthly income at the rate of Rs.5,000/- a sum of (Rs.5000X 12 X 14 X 30/100) Rs.2,52,000/- shall be awarded which will be a fair and reasonable compensation. Having regard to the nature of injury, period of hospitalisation and the pain and suffering that would have been undergone by the claimant, a sum of Rs.20,000/- under the head of 'pain and suffering', a sum of Rs.20,000/- under the head of 'transportation charges'.

11.Consequently, the total compensation amount of Rs.1,33,195/- awarded by the Tribunal is hereby modified and enhanced to Rs.3,52,337/-. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability & loss of income	Rs.1,10,000/-	Rs.2,52,000/-
Pain and Suffering	Rs.10,000/-	Rs.20,000/-
Extra nourishment	Rs.10,000/-	Rs.10,000/-
Transportation	Rs.2,000/-	Rs.20,000/-
Medical expenses	Rs.1,195/-	Rs.50,337/-
Total	Rs.1,33,195/-	Rs.3,52,337/-



12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.1,33,195/- awarded by the Tribunal is hereby enhanced to Rs.3,52,337/-, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The third respondent/Insurance company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accident Claims Tribunal cum
Fast Track Court No.4, Bhavani,
Erode District.

+1 cc to Mr.C.Kulanthaivel, Advocate, S.R.No.17494

+1 cc to M/s.T.Ravichandran, Advocate, S.R.No.17562

CMA.No.3021 of 2011

TM(CO)
SSM(11/10/2019)