

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

CORAM:

THE HONOURABLE MRs. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.470 of 2013

Munilakshmi

.. Appellant/Petitioner

Vs.

1.Theerthagiri

2.K.Vikraman

3.The Branch Manager,
National Insurance Company Limited,
Branch Office,
No.88-F, Bypass Road,
Dharmapuri.

.. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 15.12.2009 made in M.C.O.P.No.251 of 2008 on the file of the Motor Accident Claims Tribunal, the learned Additional District Judge, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondents : Mr.J.Chandran for R3
R1 & R2 - No appearance

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment dated 15.12.2009 in MCOP. No.251 of 2008, on the file of the Motor Accidents Claims Tribunal/the learned Additional District Judge, Krishnagiri.

2. The case of the appellant is that on 21.05.2006, at about 12.30 P.M., when the appellant/claimant was walking on the left side of the road in Krishnagiri to Kuppam Road at Chinnamattarapalli Village near Irular Colony. At that time a tempo carrying mineral water bearing Registration No.TN 32 A 6222 belonging to the second respondent and insured with the third respondent, driven by the first respondent herein in a rash and negligent manner, hit the claimant. As a result of which, the claimant sustained grievous injuries. Immediately, she was taken to Government Hospital, Krishnagiri for treatment and a criminal case in Crime No.124/20106 was also registered against the driver of the tempo / first respondent herein by the Kanthikuppam Police Station. According to the claimant, the rash and negligent driving of the driver / first respondent of the tempo belonging to the second respondent was the cause of the accident and that since the said tempo was insured with the National Insurance Company, the driver, the owner and the insurer are jointly and severally liable to pay compensation.

3. The driver and the owner of the tempo remained absent before the Tribunal and therefore they were set exparte. The third respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The learned Tribunal after analysing the evidence on record, awarded a compensation of Rs.63,000/- together with interest at the rate of 6% per annum to the claimant. Not being 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. Before the Tribunal, PW1 and PW2 were examined and Ex.P1 to Ex.P8 were marked. On behalf of the respondents, neither any witness was examined nor any document was marked.

5. Heard Mr.M.Sriram, learned counsel appearing for the appellant / claimant and Mr.J.Chandran, learned counsel appearing for the third respondent. No appearance on behalf of the respondents 1 and 2.

6.The learned counsel for the appellant submitted that the Tribunal failed to consider the injury sustained by the appellant are greivous in nature and the compensation awarded by the Tribunal is very meagre. The appellant was working as seller of milk, curd and vegetables and was earning a sum of Rs.4,500/- per month and due to the accident, she sustained fracture on the lower 1/3rd of tibia and abrasion on the right chin and right ankle. The Tribunal has failed to award any amount towards loss of income. PW.2/Doctor assessed the disability as 35%, but the

Tribunal erred in deducting the percentage of disability from 35% to 25% without any contra evidence. The Tribunal has also awarded a meager amounts towards pain and suffering, Extra nourishment, and Transportation. The Tribunal has failed to award any amounts towards loss of amenities and attender charges and prayed for enhancement of compensation.

7. Per contra, the learned counsel for the third respondent / Insurance Company submitted that the Tribunal rightly reduced the percentage of disability from 35% to 25% and awarded compensation of Rs.50,000/- towards disability, which is not meager. The appellant did not let in valid evidence to prove the loss of income during and after treatment period. The appellant is not entitled to compensation towards attendant charges and loss of amenities and the total compensation awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

8. From the materials available on record it is seen that the appellant has contended that he is selling curd, milk and vegetables and was earning a sum of Rs.4,500/- per month. He failed to prove the said contention. The Tribunal has failed to consider the same. Due to the injuries and disability, the appellant would not have attended her work atleast for 3 months. The appellant is entitled for a sum of Rs.13,500/- [Rs.4,500/- X 3] towards loss of income. The appellant has suffered fracture on the lower 1/3rd tibia. Dr.Ashok Kumar (PW2) has also certified that the appellant suffered 35% disability and the Tribunal has reduced the same from 35% to 25%. The reason given by the Tribunal for reducing the percentage of disability is erroneous. The appellant is entitled to compensation towards 30% disability at the rate of Rs.2,000/- per percentage. The accident occurred in the year 2006 and the amount granted by the Tribunal towards disability is hereby enhanced to Rs.60,000/- [Rs.2,000/- X 30].

9. Similarly, the Tribunal awarded a sum of Rs.10,000/- towards Pain and sufferings, a sum of Rs.1,000/- towards Transportation and a sum of Rs.1,000/- towards Extra nourishment, are low and the same are hereby modified and enhanced to a sum of Rs.20,000/- towards Pain and suffering, a sum of Rs.2,500/- towards Transportation and a sum of Rs.5,000/- towards Extra Nourishment. As rightly pointed out by the learned counsel for the appellant/claimant, the Tribunal has failed to award any amount towards Attender's Charges and this Court is inclined to award a sum of Rs.2,500/- towards Attender's

Charges. The compensation awarded by the Tribunal towards Damage to clothes is concerned, the same is found to be just and reasonable and requires, no reduction. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of income	-	13,500	Granted
2.	Permanent disability	50,000	60,000	Enhanced
3.	Pain and sufferings	10,000	20,000	Enhanced
4.	Extra nourishment	1,000	5,000	Enhanced
5.	Transportation	1,000	2,500	Enhanced
6.	Damage to clothes	1,000	1,000	Confirmed
7.	Attender's Charge	-	2,500	Granted
	Total	63,000	1,04,500	Enhanced by Rs.41,500/-

10. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.63,000/- to Rs.1,04,500/-, which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The respondents 2 and 3 are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.1,04,500/- (less the amount 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 MCOP.No.251 of 2008 on the file of the Motor Accident Claims Tribunal /the learned Additional District Judge, Krishnagiri, within a period

of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any already withdrawn, by making necessary applications before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar
vkr

To

1.The Motor Accidents Claims Tribunal/
The Additional District Judge,
Krishnagiri.

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

+1cc to Mr.J.Chandran, Advocate SR.No.104183

+1cc to Mr.Mukund R Pandian, Advocate SR.No.103723

C.M.A.No.470 of 2013

SR(CO)
GMY(21/02/2020)

सत्यमेव जयते
WEB COPY