IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.720 of 2013

Munniammal ...Appellant/Claimant

.Vs.

1.K.Soundararajan
2.The Branch Manager,
United India Insurance Company Limited,
Branch Office, Central Theatre Back Side,
Gandhi Nagar, Krishnagiri - 635 001
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgement dated 22.12.2008 passed in MCOP.No.307 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For Respondents : Mrs.I.Malar for R2
No appearance for R1

JUDGMENT

The appellant is the claimant in MCOP.No.307 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Krishnagiri. She filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the injuries sustained by her in a road accident on 29.06.2005.

2. The case of the claimant is that on 29.06.2005, she was a pedestrian on Krishnagiri - Dharmapuri National Highways, near Mathina Mosque and at about 09.30 a.m, a speeding motorcycle bearing Registration No. TN 24-A-1563 hit her, as a result of which, she sustained grievous injuries. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the United India Insurance Company, the owner

and the insurer are jointly and severally liable to pay compensation.

3. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Krishnagiri after analysing the evidence on record, awarded a compensation of Rs.62,000/- together with interest at the rate of 7.5% per annum and directed the owner of the motorcycle alone to pay the compensation to the claimant. The liability of the Insurance Company was exonerated on the grounds that (i) the rider of the motorcycle was not in possession of a valid driving license on the date of the accident, (ii) the owner of the motorcycle had given his vehicle to a third party and (iii) Registration of the vehicle was done only after a week from the date of accident. Aggrieved over the orders passed by the Tribunal, the claimant has preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard, Mr.V.Kumaravelan, learned counsel appearing for the appellant / claimant and Mrs.I.Malar, learned counsel appearing for the United India Insurance Company.

5. In the counter filed before the Tribunal by the owner of the motorcycle, it is stated that he purchased the motorcycle by availing a loan from one Chinnasamy Finance under a Hire Purchase Agreement and that since he could not pay the instalments, the vehicle was seized from him. Mr.Vijay Anand (RW2), an agent working for Chinnasami Finance had deposed that he rode the motorcycle on the date of the accident and that he had a valid driving licence on the date of the accident. The First Information Report was registered against the RW2 for the offences punishable under sections 279, 337 IPC and not for non-possession of driving licence. The Insurance Company did not adduce any evidence to controvert the contentions of the claimant and RW2. Also a perusal of a copy of the Insurance Policy (Ex.P4) shows that the vehicle was insured from 28.06.2005 to 27.06.2006. Therefore, the Tribunal has committed an error in exonerating the Insurance Company from paying the compensation to the claimant and the same is liable to be set aside.

6. A perusal of the medical records shows that the appellant/claimant has sustained the following injuries (i) lacerated wound on occipital region 6 x 2 x 1 cm (ii) fracture of both bones on her right leg and (iii) swelling in right knee. Dr.T.V.Gandhi (PW2), has assessed the partial permanent disability as 40%. Since the disability of 40% cannot be for the whole body, 10% disability is taken up for calculating "loss of earning capacity". The claimant was aged 45 years on the date of the accident. The proper multiplier to be adopted in the instant case is 14, as per the decision in Sarla Verma and others vs. Delhi Transport Corporation and another

reported in (2009) 6 SCC 121. In the claim petition, it is contended that the claimant was earning a sum of Rs.4,000/- per month as a daily wage labourer. However, no income proof was adduced by the claimant. Since the accident took place in the year 2005, a sum of Rs.3,000/- is fixed as notional monthly income of the claimant.

Loss of earning capacity
= Rs.3,000/- x 12 x 14 x 10/100
= Rs.50,400/-

On account of the accident, the claimant would not have been in a position to attend to her regular work atleast for three months and hence, a sum of Rs.9,000/- (Rs.3,000/- x 3 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs. 50,400/-
2.	Pain and sufferings	Rs. 10,000/-
3.	Transportation	Rs. 5,000/-
4.	Extra nourishment	Rs. 5,000/-
5.	Loss of income	Rs.9,000/-
6.	Attender's charges	Rs.2,000/-
7.	Damage to clothes	Rs.500/-
Total		Rs.81,900/-

7. 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.62,000/- to Rs.81,900/-, which would 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 Second respondent / United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.81,900/- (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.307 of 2006 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.T.Ravindran, Advocate SR.95342

CMA.No.720 of 2013

NRL(CO)
CB(07/01/2021)