

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.443 of 2016
and
C.M.P.No.3399 of 2016

The Branch Manager,
United India Insurance Co. Ltd.,
Branch Office, Opp to Court Building,
Rayakottai Road,
Krishnagiri - 635 001. Appellant /2nd Respondent

Vs.

1.Salammal, W/o Balan1st Respondent/petitioner

2.Sri. K.Marthandan, S/o Kalyani
.... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.08.2015 made in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

For Appellant : Mr.C.Paranthaman

For R1 : Mr.Mukund R.Pandiyan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 11.08.2015 made in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.242 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 12.05.2012. The Tribunal,

considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Auto belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.4,15,854/- as compensation to the 1st respondent. Challenging the said award dated 11.08.2015 made in M.C.O.P.No.242 of 2014, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erroneously took the disability as per Ex.P9 at 30% whereas the Tribunal has adopted multiplier method and huge sum has been awarded which is not proper. Further in the absence of any documentary evidence and proof, the Tribunal has taken the monthly income of the claimant at Rs.5,500/- per month is very much on the higher side. Further contended that the Tribunal has erroneously applied multiplier method instead of awarding compensation on the percentage of disability basis. The Tribunal has awarded a sum under the heads pain & suffering, transportation & nutrition, attender charges, loss of income and future medical expenses are excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that on 12.05.2012 at about 10.00 AM the petitioner was travelling as a passenger in the auto bearing Reg.No.TN-01-L-1780 along with other passengers. The driver of the said auto drove the same in a rash and negligent manner and in an uncontrollable speed. At the place of accident, the front wheel suddenly cut and the auto capsized upside down. Due to the impact, the petitioner sustained injuries. The petitioner sustained swelling tenderness right leg and abrasion on the left elbow. The petitioner was taken to Government Hospital, Krishnagiri and for further treatment she was taken to St.Louis Hospital, Krishnagiri. The Krishnagiri Town Police has also registered the case against the driver of the auto in Cr.No.418/2012 u/s.279, 337 of IPC. The injured person/claimant was doing agarbathi manufacturing business and she was earning a sum of Rs.7,500/- per month. The monthly income fixed by the Tribunal is not excessive. The total compensation granted by the Tribunal is not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant/Insurance Company as well as learned counsel appearing for the 1st respondent and perused all the materials on record.

6.From the materials available on record, it is seen that as per the evidence of injured person/claimant as P.W.1, she

sustained injuries in the accident and to prove the same, she examined P.W.2-Doctor. P.W.2-Doctor has assessed the disability of the appellant at 45% but the Tribunal has taken the disability of the appellant at 30% according to the citation reported in "2009(2) TNMAC 1 (SC) Sarala Verma Vs. Delhi Transportation Corporation". As per Ex. The claimant was aged about 45 years at the time of accident. The Tribunal has applied correct multiplier '14'. The injured person/claimant was doing agarbathi manufacturing business and she was earning a sum of Rs.7,500/- per month. The claimant has not filed any documents to substantiate the same. The Tribunal has taken monthly income of the claimant at Rs.5,500/-. In view of the documents as well as the arguments advanced by both side the sum awarded towards loss of earning capacity has to be modified by awarding Rs.3,000/- per percentage for 45% disability. The sum has to be calculated as Rs.2,26,800/- (Rs.3,000/- x 12 x 14 x 45%). The Tribunal has not awarded any sum towards loss of amenities and this Court grants a sum of Rs.20,000/-. The sum awarded by the Tribunal under other heads are proper and reasonable and does not require any modification. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of earning capacity	Rs.2,77,200/-	Rs.2,26,800/-
2.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
3.	Medical expenses	Rs.14,154/-	Rs.14,154/-
4.	Extra nutrition and transportation	Rs.20,000/-	Rs.20,000/-
5.	Attender charges	Rs.20,000/-	Rs.20,000/-
6.	Partial loss of income	Rs.27,500/-	Rs.27,500/-
7.	Future medical expenses	Rs.7,000/-	Rs.7,000/-
8.	Loss of amenities	-	Rs.20,000/-
	Total	Rs.4,15,854/-	Rs.3,85,454/-

7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,15,854/- is reduced to Rs.3,85,454/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs. Consequently, connected Miscellaneous Petition is closed.

8.The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/1st claimant is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.242 of 2014, if the entire award amount has already been deposited by them.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.C.Paranthaman, Advocate Sr.77323

C.M.A.No.443 of 2016
and
C.M.P.No.3399 of 2016

mr[co]
srg 08/06/2020