

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2019
DELIVERED ON : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.45 of 2007 and
Cros.Obj.No.44 of 2007

C.M.A.No.45 of 2007:

Srimathi ... Appellant in the Appeal on 1st
Respondent in the Cross.Objection
(Claimants)

Vs

1.Vishal Kankaria

2.Industrial Hardware Stores
152, Kamarajar Salai
Pondicherry-605 013.

3.New India Assurance Company Ltd.,
rep.by its Divisional Manager,
Pondicherry.

... Respondents in
the Appeal and Respondents 2 and 3
and Cross Objection (Respondents)

Appeal under Section 173 of the Motor Vehicles Act and
Cross Objection under Order XLI, Rule 22 of the Code of Civil
Procedure, against the judgment and decree dated 12.07.2005 made
in MCOP No.2539 of 2000 on the file of the Motor Accidents
Claims Tribunal (III Small Causes Judge), Madras.

For Appellant in CMA
and R1 in Cros.Obj. : Ms.R.Meenal

For R3 in CMA /
Cross Objector : Ms.R.Sreevidhya

R2 : NA

COMMON JUDGMENT

The case in brief, is as follows:

On 18/19.06.1998 at about 00.45 hours, the appellant in the CMA along with her husband and daughter, was proceeding in a Maruti car bearing Reg.No.TN-07-F-922 from North to South direction, ie., from Cenotaph Road to Turnbull Road and while proceeding to Adyar, the Maruti Omni Van bearing Reg.No.PY-01-C-6847 belonging to the second respondent and insured with the third respondent Insurance Company in the appeal, came from East to West direction in the Pasumpon Muthuramalinga Devar Road at the inter junction of Turnbull Road and Muthuramalinga Devar Road, in a rash and negligent manner at high speed and dashed against the Maruti Car. As a result of the impact, the Maruti car turned turtle and the appellant sustained multiple grievous injuries. The injured filed a claim petition claiming a sum of Rs.15,00,000/- as compensation before the Tribunal. Considering the materials and evidence available on record, the Tribunal awarded a sum of Rs.11,01,000/- with interest at the rate of 9% per annum from the date of petition, as total compensation.

2.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation and the Insurance Company has filed the Cross Objection.

3.The learned counsel for the appellant-claimant has submitted that the appellant sustained grievous multiple injuries and the Tribunal has failed to note that the appellant has suffered 80% permanent total disability and she is virtually immobile and bedridden; that the Tribunal has erred in awarding only a sum of Rs.1,00,000/- towards total permanent disability. The Tribunal has failed to note that the appellant is not able to carry on her day to day work, without any help and she needs a 24-hour attendant to take care of her and that she could not function without the physical help of a third person. It is specifically submitted that she needs continuous treatment and physiotherapy and hence she has to be compensated for future medical expenses. She finally submitted that the Tribunal ought to have awarded the compensation of Rs.15,00,000/- as claimed by the appellant.

4.The learned counsel for the third respondent Insurance Company in the appeal / Cross Objector, has submitted that the Tribunal has erred in awarding a sum of Rs.1,00,000/- towards permanent disability, when already a sum of Rs.3,96,000/- has been awarded by adopting multiplier method and hence the award is repetitive. She submitted that the compensation awarded by the Tribunal is huge and disproportionate without following any

guidelines. Stating so, the learned counsel prayed for reducing the compensation awarded by the Tribunal.

5. Heard the learned counsel for the appellant / claimant and the learned counsel for the Insurance Company and perused the materials and evidence available on record, carefully and meticulously.

6. The Tribunal has awarded a sum of Rs.3,96,000/- towards loss of income taking note of Exs.P30 to 33 which showed that the injured was working in Real Estate Company at America from 1972 to 1986, after her marriage. Ex.P34 - Notice (Annual General Body Meeting), has been filed to substantiate that she was earning a sum of Rs.3,000/- per month. Taking note of the materials and evidence, the Tribunal has taken the monthly income of the claimant at Rs.3,000/- and awarded a sum of Rs.3,96,000/- by adopting 11 multiplier, in respect of loss of income. The Tribunal has also awarded a sum of Rs.3,99,000/- towards medical expenses by relying upon Exs.P20 to 24 and 26, which is an actual expenditure. The Tribunal has also awarded a sum of Rs.1,000/- towards transportation expenses, Rs.5,000/- towards extra nourishment and Rs.1,00,000/- each towards attender charges, pain and suffering and permanent disability. The amounts awarded towards the above heads are reasonable and hence the same are confirmed. But the Tribunal has not awarded any amount towards future medical expenses and loss of amenities. A letter dated 25.07.2019 by the Doctor who is treating the injured herein, has been produced before this Court, in which it is stated that because of the injuries sustained in the accident, the injured is now having residual neurological weakness of both the upper limbs and left lower limb and she still requires one person's support for her day to day activities and further, her disability requires continuous supportive treatment. The fact remains that in view of the injuries sustained by the injured, she requires continuous treatment and physiotherapy and further she requires continuous support for her day to day activities. In this connection, this Court is of the view that she has to be compensated for future medical expenses and loss of amenities.

7. At this juncture, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Jagdish v. Mohan, reported in (2018) 4 SCC 571, in which, in respect of permanent disability, it has been held that measure of compensation must reflect a genuine attempt of law to restore dignity of being; yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life; it must provide a realistic recompense for pain of loss and trauma of suffering. Applying the said principles to the case of the

injured, who is in such a pathetic situation, it would be appropriate to award a sum of Rs.2,00,000/- towards future medical expenses, Rs.1,00,000/- towards loss of amenities and an additional amount of Rs.40,000/- each towards pain and suffering and attender charges.

8.The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	3,96,000/-
Medical expenses	3,99,000/-
Transportation Expenses	1,000/-
Extra nourishment	5,000/-
Attender charges	1,40,000/-
Pain and suffering	1,40,000/-
Permanent disability	1,00,000/-
Future medical expenses	2,00,000/-
Loss of amenities	1,00,000/-
TOTAL...	----- 14,81,000/- =====

Thus, the appellant / claimant is entitled to the modified compensation of Rs.14,81,000/-.

9.It is made clear that only for the compensation of Rs.11,01,000/-, the interest rate will be 9% per annum as ordered by the Tribunal, which shall be calculated from the date of claim petition. For the enhanced amount of Rs.3,80,000/-, the interest rate will be 7.5% per annum and the same shall be calculated from the date of filing of this appeal.

10.In the result, the Civil Miscellaneous Appeal is partly allowed and the Cross Objection is dismissed. No costs.

11.The third respondent Insurance Company is directed to deposit the modified compensation as ordered above, after

deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(Ad-I)

//True Copy//

Sub Assistant Registrar

KM

To

1.The III Judge, Court of Small Causes ,
(Motor Accidents Claims Tribunal)
Madras.

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

+1cc to M/s.R.Sreevidhya, Advocate SR.77213
+1cc to M/s.R.Meenal, Advocate SR.76680

C.M.A.No.45 of 2007 and
Cros.Obj.No.44 of 2007

RGN(CO)
CB(14/02/2020)