

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.789 of 2017 and 1263 of 2019
and
C.M.P.No.4257 of 2017

C.M.A.No.789 of 2017:

The United India Insurance Company Limited,
3, Giriram Buildings,
Main Road, Gopi Town & Post,
Erode District. .. Appellant/2nd Respondent

Vs.

1.Palaniammal .. 1st Respondent/Petitioner
2.Saraswathi ..2nd Respondents/1st Respondent

C.M.A.No.1263 of 2019:

Palaniyammal .. Appellant/Petitioner

Vs.

1.Saraswathi
2.The United India Insurance Company Limited,
3, Giriram Buildings,
Main Road, Gopi Town & Post,
Erode District. .. Respondents/Respondents
(R1 remained exparte before Tribunal,
notice may be dispensed with)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2012 made in M.C.O.P.No.455 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam.

C.M.A.No.789 of 2017:

For Appellant	:	Mr.T.Ravichandran
For R1	:	Mr.Ma.P.Thangavel

C.M.A.No.1263 of 2019:

For Appellant : Mr.Ma.P.Thangavel
For R2 : Mr.T.Ravichandran

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 07.03.2012 made in M.C.O.P.No.455 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam.

2.Both the appeals are arising out of the same award and hence they are disposed of by this common judgment. The parties are referred to as per their rank in claim petition, for the sake of convenience.

3.The appellant in C.M.A.No.1263 of 2019 is the claimant in M.C.O.P.No.455 of 2009. The appellant in C.M.A.No.789 of 2017 is the second respondent in M.C.O.P.No.455 of 2009. The claimant filed the above said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 07.08.2009.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the van belonging to the first respondent and directed the respondents to pay a sum of Rs.1,00,000/- as compensation to the claimants.

5.Against the award dated 07.03.2012 made in M.C.O.P.No.455 of 2009 granting compensation to the claimant, the second respondent-Insurance Company has come out with appeal in C.M.A.No.789 of 2017. Not being satisfied with the amount awarded by the Tribunal, the claimant has come out with appeal in C.M.A.No.1263 of 2019, for enhancement of compensation.

6.The learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal failed to see that accident occurred only due to negligence on the part of the claimant. She herself fell down from the van and sustained injuries. There is no negligence on the part of the driver of the van. The Tribunal ought to have seen that claimant herself contributed to the accident and ought to have fixed contributory negligence on the part of the claimant. The Tribunal erred in awarding amount towards medical expenses when the claimant failed to produce any document to show that she incurred expenses towards her treatment and total amount awarded as compensation under different heads are excessive and prayed for

setting aside the award passed by the Tribunal and dismissal of appeal filed by the claimant.

7. Per contra, the learned counsel appearing for the claimant contended that the claimant was working as sweeper in private school and on the date of accident, she traveled in the school van to leave the children in their houses. After leaving a child in the house, before she get into the van, the driver of the van started the van at a high speed and she fell down from the van due to the negligence on the part of the driver of the van and sustained injuries. She has taken treatment in the hospital as in-patient for 15 days from 07.08.2009 to 21.08.2009. She suffered fracture and underwent surgeries and plates were implanted. The claimant examined herself as P.W.1 and examined two Doctors as P.W.2 and P.W.3 to prove the nature of injuries and that she suffered functional disability. The claimant was earning a sum of Rs.2,500/- per month. The accident occurred in the year 2009. The Tribunal ought to have fixed a sum of Rs.4,500/- as monthly income and granted compensation. The Tribunal correctly adopted multiplier method and erroneously deducted 1/4rd towards personal expenses and prayed for enhancement of compensation and dismissal of appeal filed by the second respondent-Insurance Company.

8. I have heard the learned counsel appearing for the second respondent-Insurance Company as well as the claimant and perused entire materials on record.

9. From the materials available on record, it is seen that the claimant has contended that while she was getting into the school van after leaving a child in the home, the driver of the van started the school van at a high speed and due to the same, she fell down and sustained injuries. To prove the said contention, she examined herself as P.W.1. The second respondent-Insurance Company examined the driver of the van as R.W.1. R.W.1 deposed that he was acquitted in the criminal case. The Tribunal considering the evidence of claimant as P.W.1, held that the driver of the van ought to have started the van only after verifying whether the claimant has got into the van or not. For the above reason, the Tribunal held that accident occurred only due to rash and negligent driving by the driver of the van belonging to the first respondent and the second respondent as insurer is liable to pay the compensation. There is no error in the above finding of the Tribunal warranting interference by this Court.

10. As far as quantum of compensation is concerned, claimant contended that she was working as sweeper in a private school and was earning a sum of Rs.2,500/- per month. There is no contra evidence let in by the respondents. The Tribunal accepted

the monthly income of the claimant as stated by her in the claim petition, erroneously deducted 1/4th towards personal expenses, applied multiplier '5' and granted compensation for 40% disability. The claimant was aged 60 years at the time of accident and the correct multiplier is '7'. The compensation amount deducted by the Tribunal towards personal expenses is set aside. The contention of the claimant that the Tribunal ought to have fixed monthly income at Rs.4,500/- for the accident which occurred in the year 2009 is without merits. The claimant herself has stated in the claim petition that she was earning a sum of Rs.2,500/- per month. The monthly income of the claimant is fixed at Rs.2,500/-. The amount awarded by the Tribunal towards loss of income is modified to Rs.84,000/- (Rs.2,500/- X 12 X 7 X 40/100). P.W.2/Doctor has stated that claimant requires a sum of Rs.15,000/- for removal of plates and screws, implanted during surgery. The Tribunal has granted a sum of Rs.10,000/- towards future medical expenses. The same is meager and is enhanced to Rs.15,000/-. Considering the age of the claimant, a sum of Rs.7,000/- granted by the Tribunal towards pain and sufferings is enhanced to Rs.15,000/-. A meager sum of Rs.3,000/- granted by the Tribunal towards extra nourishment is hereby enhanced to Rs.10,000/-. The Tribunal has not granted any amount towards transportation. A sum of Rs.5,000/- is granted by this Court towards transportation. The amount awarded by the Tribunal towards medical expenses is confirmed. 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)	Award confirmed or enhanced or granted
1.	Loss of income	45,000/-	84,000/-	enhanced
2.	Medical expenses	35,000/-	35,000/-	confirmed
3.	Future medical expenses	10,000/-	15,000/-	enhanced
4.	Pain and sufferings	7,000/-	15,000/-	enhanced
5.	Extra nourishment	3,000/-	10,000/-	enhanced
6.	Transportation	-	5,000/-	granted
	Total	Rs.1,00,000/-	Rs.1,64,000/-	Enhanced by Rs.64,000/-

11. In the result, the appeal filed by the claimant in C.M.A.No.1263 of 2019 is partly allowed and the appeal filed by the second respondent-Insurance Company in C.M.A.No.789 of 2017 is dismissed. The compensation awarded by the Tribunal at Rs.1,00,000/- is hereby enhanced to Rs.1,64,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay the Court fee, if any, on the enhanced amount of compensation. The respondents are directed to deposit the enhanced 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 to the credit of M.C.O.P.No.455 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam. On such deposit, the claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Gobichettipalayam.

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.28119

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.27878

C.M.A.Nos.789 of 2017 and 1263 of 2019
and C.M.P.No.4257 of 2017

SSD(CO)
CS/26/07/2019
CS/27/08/2019