

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2742 of 2018 and
C.M.P.No.20812 of 2018

The Branch Manager,
United India Insurance Company Ltd.,
Sankari 637 301,
Salem District.

.. Appellant/2nd Respondent

Vs.

1.Venkatamma .. 1st Respondent/Petitioner

2.Azhagusundaram .. 2nd Respondent/1st Respondent

3.Janaki

4.The Branch Manager,
New India Assurance Co.Ltd
No.14/7, K.G.Complex,
Bagalur Road, Hosur.

.. 3rd & 4th Respondents/
3rd & 4th Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.06.2018 made in M.C.O.P.No.594 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.C.Paranthaman

For R1 to R2 : Not ready in notice

For R4 : Mr.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 12.06.2018 made in M.C.O.P.No.594 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant is the second respondent in M.C.O.P.No.594 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The first respondent filed the above said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by her in the accident that took place on 09.01.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the Second respondent, insured with the appellant-Insurance Company and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.5,31,000/- as compensation to the first respondent/claimant.

4.Against the said award dated 12.06.2018 made in M.C.O.P.No.594 of 2014, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the second respondent. The Tribunal had failed to see that the lorry belonging to the third respondent was parked without any parking light and the driver of the lorry only was negligent and responsible for the accident. The Medical Board has certified that the first respondent suffered 15% disability. The Tribunal erred in fixing partial functional disability at 25 %. The Tribunal is not a medical expert to determine the functional disability. The Medical Board issued disability certificate after examining the first respondent physically and other treatment records and fixed disability at 15%. The Tribunal ought to have accepted the report of the Medical Board. The Tribunal mechanically applied multiplier method. The notional income fixed by the Tribunal and 40% enhancement are excessive. The amount granted by the Tribunal for loss of amenities and enjoyment is excessive.

6.Though the first respondent entered appearance through counsel, there is no representation on behalf of her, either in person or through counsel.

7.I have heard the learned counsel appearing for the appellant-Insurance Company and perused all the materials available on record.

8.From the materials on record, it is seen that the Medical Board after examining the first respondent has certified that the first respondent suffered 15% disability. Contrary to the

report of the Medical Board the Tribunal for erroneous reason, has enhanced the percentage of disability to 25%. The contention of the learned counsel for the appellant that the Tribunal is not a Medical expert and ought to have accepted the report of the Medical Board has considerable force and is acceptable. In view of the same, the percentage of the disability is reduced to 15%. The first respondent was working as a Vegetable Vendor. The Tribunal considering the nature of work done by the first respondent, applied multiplier method and considering the age, fixed notional income of the first respondent at Rs.6,500/- and granted 40% enhancement, which are not excessive. Thus, the amount awarded by the Tribunal towards loss of earning power is modified to Rs.2,45,700/-[Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-) x 12 x 15 X 15/100]. The Tribunal granted a sum of Rs.50,000/- towards loss of amenities and enjoyment of life, which is excessive and the same is reduced to Rs.25,000/-. The amounts awarded by the Tribunal under other heads are 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 earning power	4,10,000/-	2,45,700/-	reduced
2.	Medical expenses, transport, nutrition and attender charges	20,000/-	20,000/-	confirmed
3.	Pain and sufferings	50,000/-	50,000/-	confirmed
4.	Loss of amenities and enjoyment of life	50,000/-	25,000/-	reduced
5.	Damages to clothing and articles	1,000/-	1,000/-	confirmed
	Total	Rs.5,31,000/-	Rs.3,41,700/-	Reduced by Rs.1,89,300/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,31,000/- is hereby modified to Rs.3,41,700/- with interest

at the rate of 9% per annum from the date of petition till the date of deposit. 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 first respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. 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.594 of 2014, if the entire amount has already been deposited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

krk/tta

To

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

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

+1 cc to M/s.R.Sree Vidhya, Advocate, Sr.No. 14947

+1 cc to Mr.C.Paranthaman, Advocate, Sr.No. 14235

+1 cc to Mr.S.Vigneshwaran, Advocate, Sr.No. 14752(29.07.2019)

सत्यमेव जयते

C.M.A.No.2742 of 2018 and
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VGI (CO)

CSL/22.07.2019

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