



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD).No. 740 of 2019

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Sulochana

... Appellant / claimant

Vs.

1. Deepa
2. The Divisional Manager,
New India Assurance Company Limited,
Market Road,
Thanjavur.

.. Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the Award passed in MCOP.No. 316 of 2018, dated 10.08.2018 on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur.

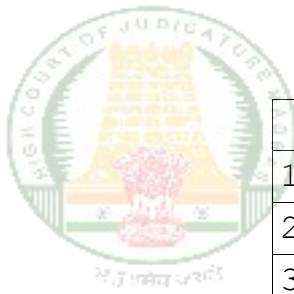
For appellant : Mr. G. Karnan
For 2nd respondent : Mr.K. Murugesan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award dated 10.08.2018 passed in MCOP.No. 316 of 2018, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur.

2. This is a case of injury. On 18.01.2018 at about 10.45 hours while the appellant / claimant was travelling along with his family members in a Car bearing Reg.No. TN 02 AQ 0250 on Pullor Koot Road near Ulundurpettai, a Lorry bearing Regn. No. TN 70 M 1038, which came in the opposite direction and driven by its driver in a rash and negligent manner, dashed against the car. Due to the accident, the appellant / claimant sustained multiple injuries. Hence, she filed claim petition in MCOP.No. 316 of 2018, before the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur, seeking compensation of Rs.10,00,000/- and the Tribunal has awarded a sum of Rs. 3,86,500/- as total compensation. Against the said Award, the appellant / claimant has filed the present appeal seeking enhancement of compensation on the ground that the Tribunal has not awarded any amount towards loss of income, loss of amenities, etc.,

3. The Tribunal has awarded compensation to the appellant / claimant in the manner stated below:



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S.No.	Heads	Amount
1.	Partial disability	1,86,000.00
2.	Pain and suffering	50,000.00
3.	Medical Expenses	96,200.00
4.	Future Medical Expenses	25,000.00
5.	Food and Nutrition	10,000.00
6.	Attendant Charges	10,000.00
7.	Transportation Charges	9,300.00
	Total	3,86,500.00

4. The learned counsel appearing for the appellant / claimant contended that the disability certificate was issued by the Doctor as 62% and the same has been marked as Ex.P45. The appellant has also marked Xray as Ex.P46 through PW.1. The Doctor who issued the disability certificate also examined and categorically stated that the claimant sustained 62% disability.

5. The learned counsel appearing for the appellant further contended that the amount awarded by the Tribunal towards the disability i.e., a sum of Rs.3,000/- per percentage of disability, is too low. On the contrary, the learned counsel appearing for the 2nd respondent / Insurance Company contended that the Doctor who issued the disability certificate has not treated the appellant. However, as per the disability certificate, the Tribunal has awarded a sum of Rs.1,86,000/- as partial permanent disability which is just and fair and hence, there is no need to interfere with the award passed by the Tribunal towards loss of permanent partial disability.

6. Considering the submission made by the learned counsel appearing on either side and also upon perusal of the disability certificate and other X-rays marked as Exs.P45 and 46, this Court is of the view that the compensation awarded by the Tribunal towards partial permanent disability is just and fair and hence, there is no need for interference by this Court with regard to the compensation awarded by the Tribunal towards partial permanent disability.

7. The learned counsel appearing for the appellant would submit that no amount was awarded towards removal of screw and plates, which was already fixed at the time of accident. He further contended that the removal of said screws and plates, they have to spend a further sum of Rs.40,000/-. Apart from that, the appellant herein will have to incur further medical expenses due to 62% of the disability. Therefore, he would submit that the additional compensation of Rs.40,000/- may be awarded towards removal of screw and plates and also Rs.30,000/- towards future medical expenses.



8. The learned counsel appearing for the 2nd respondent has submitted that this Court may consider the above submission and award reasonably.

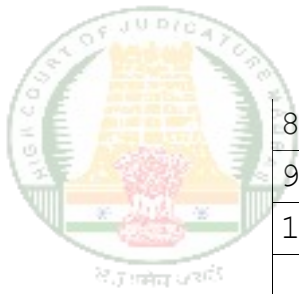
9. Taking into consideration of the nature of injuries, nature of the treatment and percentage of disability, this Court is of the view that the appellant is required to spend some amount to remove the screws and plates already fixed in the body, and hence, a sum of Rs.40,000/- is hereby awarded towards removal of screws and plates, and also a further sum of Rs.30,000/- is hereby awarded towards future medical expenses.

10. Further, it is seen that as rightly stated by the claimant, the Tribunal has not awarded any amount towards loss of income. Though the appellant / claimant deposed that she was earning a sum of Rs.25,000/- per month by Tailoring work. The Court below has refused to accept the said averments due to the failure on the part of the appellant to prove her income as Rs.25,000/- per month by way of tailoring work. The Court below could have considered the oral evidence of the appellant with regard to the earning of income. Apart from that, it is not possible for the appellant to produce any documentary evidence. Considering the age of the claimant, her nature of job and the the escalation of prices, this Court is inclined to award Rs.50,000/- as lumpsum compensation. Accordingly, Rs.50,000/- is hereby awarded towards loss of income.

11. Since the Tribunal has already awarded a sum of Rs.1,86,000/- towards the disability, there is no necessity to enhance the amount awarded by the Tribunal towards loss of permanent partial disability. In all other aspects, the amount awarded by the Tribunal is hereby confirmed.

12. Accordingly, the amount awarded by the Tribunal is hereby enhanced from Rs.3,86,500/- to Rs.5,06,500/- together with interest at 7.5% per annum from the date of petition till date of deposit in the manner stated below:

S.No.	Heads	Amount
1.	Partial disability	1,86,000.00
2.	Pain and suffering	50,000.00
3.	Medical Expenses	96,200.00
4.	Future Medical Expenses	25,000.00
5.	Food and Nutrition	10,000.00
6.	Attendant Charges	10,000.00
7.	Transportation Charges	9,300.00



8.	Loss of income	50,000.00
9.	Future Medical expenses	40,000.00
10.	Removal screws and plates	30,000.00
	Total	5,06,500.00

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13. The 2nd respondent / Insurance Company is directed to deposit the entire award amount of Rs.5,06,500/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs to the credit of MCOP.No. 316 of 2018, on the file of the Motor Accidents Claims Tribunal / Special Sub Court, Thanjavur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of copy this order. On such deposit, the Tribunal is directed to transfer the amount to the appellant's / claimant's Bank account through RTGS within a period of two weeks, thereafter.

14. In fine, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS III)

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/ /2020

Sub Assistant Registrar(CS)

Trp

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal, Thanjavur.

+1 CC to M/s.G.KARNAN, Advocate (SR-95207[F] dated 31/10/2019)

+1 CC to M/s.K.MURUGESAN, Advocate (SR-95172[F] dated 31/10/2019)

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