

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 106 of 2006

Lakshmi .. Appellant /Petitioner
Vs.

1.K.K. Unnikrishnan

2.The United India Insurance Co. Ltd.,
Katpadi Road, Vellore,
Vellore District.

3.A. Madhiyazhagan

4.The Oriental Insurance Co. Ltd.,
Katpadi Road, Vellore,
Vellore District.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.06.2004, made in M.C.O.P. No. 974 of 2002 (earlier M.C.O.P. No. 323 of 1998 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupattur), on the file of the Fast Track Court, Additional District Court, (Motor Accident Claims Tribunal), Tirupattur.

For Appellant : Mr. M. Kavikannan
for Mr. N. Nallapan

For Respondents: Mr. M.J. Vijayaraghavan (for R2 & R4)
No appearance (For R3)
R1 Left

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 25.06.2004, made in M.C.O.P. No. 974 of 2002 (earlier M.C.O.P. No. 323 of 1998 on the file of the Motor Accident Claims Tribunal, Tirupattur), on the file of the Fast Track Court, (Additional District Judge), Tirupattur.

2.The appellant-claimant filed M.C.O.P. No. 974 of 2002 (earlier M.C.O.P. No. 323 of 1998 on the file of the Motor Accident Claims Tribunal, Tirupattur), on the file of the Fast

Track Court, (Additional District Judge), Tirupattur, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 03.02.1998.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the vehicles and fixed 40% negligence on the part of the Driver of the Car belonging to the 1st respondent and 60% negligence on the part of the Driver of the Lorry belonging to the 3rd respondent. The Tribunal awarded a sum of Rs.10,000/- as compensation to the appellant and directed the respondents 2 and 4, as insurer of the Car and Lorry to pay 40% and 60% of the award amount respectively.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant suffered fracture on the left upper hand and grievous injury on the left eyebrow to the centre head. The Tribunal rejected the evidence of P.W.3 - Doctor, medical bills, X-ray and disability certificate marked as exhibits, on the ground that the disability certificate is a belated one. The Tribunal ought to have appreciated the fact that the purpose of disability certificate is to ascertain the exact nature of disability on the date of giving evidence and hence, for trial after 5 years, the disability certificate has to be obtained only at that time. Also, it is practically impossible for the Doctor who assessed and issued the disability certificate to treat the claimant. The Tribunal awarded interest at the rate of 6% per annum, instead of 9% per annum. The total compensation granted by the Tribunal is meagre and hence prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the respondents 2 and 4 contended that the amounts awarded by the Tribunal is not meagre and the appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the respondents 2 and 4 and perused the materials available on record.

8.It is the contention of the appellant that she sustained fracture on the left upper hand and grievous injury on the left eyebrow to the centre head. P.W.3- Doctor has assessed the percentage of disability suffered by the appellant as 35% and produced Ex.A29 - disability certificate to that effect. The respondents 2 and 4 did not let in any contra evidence to disprove the evidence of P.W.3- Doctor and Ex.A29 - disability certificate. The Tribunal rejected the evidence of P.W.3 - Doctor and Ex.A27 - X-ray, Ex.A29 -

disability certificate, on the ground that P.W.3 - Doctor did not give treatment to the appellant and appellant has not produced any document to show that she was in continuous treatment until she was examined by P.W.3- Doctor on 26.06.2003. The said reasoning for rejecting the evidence of P.W.3, Exs.A27 and A29 is erroneous. P.W.3 Doctor deposed that there is an improper joining of humerus bone and also the movements of the left shoulder and elbow are restricted and issued Ex.A29, disability certificate to the effect that the appellant suffered 35% disability. Hence, the appellant is entitled to a sum of Rs.35,000/- (Rs.1,000/- x 35%) towards disability at the rate of Rs.1,000/- per percentage for 35% disability. For the injuries suffered in the accident, the appellant has taken treatment as in-patient in Government Hospital, Ambur and subsequently, in Christian Medical College Hospital, Vellore, during which period, the family members of the appellant would have attended her. Hence, a sum of Rs.5,000/- is awarded towards attendant charges and Rs.5,000/- towards extra nourishment. In view of the amounts granted towards the above heads, the amount granted by the Tribunal towards other incidental charges are set aside.

9.The appellant claimed that she was self-employed and was earning a sum of Rs.3,000/- per month. She has failed to prove the same. The accident is of the year 1992. In the absence of any material evidence to prove her avocation and income and considering the date of accident, a sum of Rs.2,000/- per month is fixed as the notional income of the appellant. Due to the injuries and the disability suffered in the accident, she would not have worked atleast for a period of three months. Hence, the appellant is entitled to a sum of Rs.6,000/- (Rs.2,000/- x 3 months) towards loss of income for a period of three months. The amount awarded by the Tribunal towards pain and suffering is just and reasonable and the same is confirmed. The Tribunal has awarded compensation along with interest at the rate of 6% per annum. Considering the raise in cost of living, the appellant is entitled to interest at the rate of 7.5% per annum. Thus, the compensation awarded to the appellant is modified as follows:

S. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Pain and suffering	5,000/-	5,000/-	Confirmed
2.	Other incidental expenses	5,000/-	-	Set aside
3.	Extra nourishment	-	5,000/-	Granted

4.	Attendant charges	-	5,000/-	Granted
5.	Disability	-	35,000/-	Granted
6.	Loss of income	-	6,000/-	Granted
	Total	10,000/-	56,000/-	Enhanced by Rs.46,000/-

10. In the result, the appeal is partly allowed and a sum of Rs.10,000/- awarded by the Tribunal is enhanced to Rs.56,000/- along with 7.5% interest and costs. The respondents 2 and 4 are directed to deposit 40% i.e., Rs.22,400/- and 60% i.e., Rs.33,600/- of the award amount now determined by this Court respectively, along with 7.5% interest and costs, 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. 974 of 2002. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs. The appellant is directed to pay the court fee, if any, on the enhanced award amount of Rs.46,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District and Sessions Judge,
The Fast Track Court,
Motor Accident Claims Tribunal,
Tirupattur.

2. Motor Accident Claims Tribunal,
Sub Judge, Tirupattur.

Copy To

The Section Officer,
V.R Section, High Court, Madras.

+1cc to Mr.M.J.Vijayaraghavan, Advocate, S.R.No. 20953
+1cc to Mr.N.Nallappan, Advocate, S.R.No. 21375

C.M.A. No. 106 of 2006

BR (CO)