

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1166 of 2013

Suruliammal

... Appellant/Petitioner

Vs.

1. R.Saritha

2. Reliance General Insurance Co. Ltd.,
Reliance Building,
No.6, Haddows Road,
Chennai - 6

... Respondents/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 18.06.2012 made in M.C.O.P.No.401 of 2010 on the file of the Motor Accident Claims Tribunal, III-Additional District and Sessions Judge, Poonamallee and enhance the entire award amount in the interest of justice.

For Appellant : Mr.G.Mannarmannan

For R2 : Mr.S.Arunkumar
R1 - Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the Award dated 18.06.2012 passed in M.C.O.P.No.401 of 2010 by the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Poonamallee.

2. It is the case of the appellant that on 07.06.2008 at about 20.30 hours, while the appellant was travelling as a passenger in Auto bearing Registration No.TN 60C 5126 at Theni - Madurai High Road from West to East and at that time, a mini lorry bearing reg. No.TN-55-C-1445, which belongs to the 1st respondent was driven by its driver in a rash and negligent manner and dashed against the appellant and caused accident. Due to the same, the appellant sustained grievous injuries all over the body and inspite of treatment, the appellant is not able to do her work as she did earlier. She was a coolie and used to get a daily income of Rs.100/- The vehicle of the 1st

respondent was insured with the 2nd respondent, hence the claim petition has been filed claiming compensation of Rs.5,00,000/- from the respondents.

3. Per contra, it is the case of the 2nd respondent / insurance company that the accident did not occur due to the rash and negligent driving of the 1st respondent's vehicle and the age, occupation, income and injuries of the appellant are specifically disputed. The 2nd respondent denied the driving license of the driver of the 1st respondent, insurance policy and the other vehicle records, thereby pleaded to dismiss the claim petition filed by the appellant.

4. During the trial before the Tribunal, on the side of the claimant, Suruliammal, herself was examined as P.W.1 and Dr.Subramaniam, was examined as P.W.2 and the following documents were marked.

Ex.P1 : Copy of FIR
Ex.P2 : Copy of Charge Sheet
Ex.P3 : Accident Register
Ex.P4 : Discharge Summary
Ex.P5 : Case Diary
Ex.P6 : Photos
Ex.P7 : Insurance Policy
Ex.P8 : X-Ray
Ex.P9 : X-Ray
Ex.P10 : Disability Certificate
Ex.P11 : X-Ray

5. The first respondent was absent and he was set exparte before the court below. On the side of the second respondent, no witnesses were examined and no documents were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellant / claimant and awarded a sum of Rs.1,38,000/- as compensation to the claimant and the same is tabulated below. Aggrieved by the award, the claimant has filed this appeal before this Court.

Sl.	Name of Heads	Amount
01	Loss of Earning during period of treatment	Rs.9,000
02	Transportation	Rs.2,000
03	Extra Nourishment	Rs.2,000
04	Damages to clothing and articles	Rs.500
05	Pain and Suffering	Rs.15,000

Sl.	Name of Heads	Amount
06	Partial Permanent disability and loss of earning power	Rs.1,10,000
	TOTAL	Rs.1,38,500/-

7. The learned counsel for the appellant contends that the amount awarded by the Tribunal is very meager and prays to enhance the compensation. Further, he submitted that the appellant's husband is suffering from polio attack and that she has two female children and she is the sole bread winner of the family, hence she demands extra compensation.

8. The learned counsel for the 2nd respondent reiterates the pleadings in the counter and contended that the award passed by the court below is just and reasonable and pleaded to dismiss the petition.

9. On perusal of the award dated 18.06.2012 passed by the Motor Accident Claims Tribunal (III Additional District Court), Poonamalle, it is seen that Tribunal has come to the conclusion that the accident happened only due to the negligence of the first respondent's driver and the Tribunal has fixed monthly income of the deceased as Rs.3,000/- Due to the said accident, the appellant sustained Grade II fracture of both bones, left leg, fracture of both of bone, forearm right compound Grade-II and other series multiple injuries all over the body and she underwent inpatient treatment for 45 days, therefore, quantum for loss of earning during the period of treatment was fixed as Rs.9,000/- and the same is hereby confirmed.

10. Also, the claimant had sustained fracture on both hands and legs and also grafting has been done from the thighs and hence definitely, she would not be in a position to work for 9 to 10 months. Therefore, the pain and sufferings awarded by the Tribunal is a meager amount, hence the same is hereby enhanced to Rs.30,000/- from Rs.15,000/-

11. Further, taking shelter of Ex.P.10, given by P.W.2, Doctor, who had assessed 65% disability, the Tribunal had fixed a sum of Rs.1,10,000/- as compensation for Partial Permanent Disability and loss of earning power and the same is hereby confirmed.

12. That apart, it is to be noted that the appellant's husband is suffering from polio attack, hence he also may not be in a position to eke his livelihood and had expected the appellant to take care of him and children. Hence it is clear that the mental trauma undergone by the appellant could not be explained in words, therefore, a sum of Rs.15,000/- is hereby awarded under the head Mental Agony.

13. It is further seen that considering the distance between the place of accident and hospital, number of trips and the duration of treatment and the upkeepment of health, the Tribunal has awarded a sum of Rs.2,000/- each under Transportation and Extra Nourishment, the same in the considered opinion of this Court are meager, hence a sum of Rs.8,000/- is enhanced and a sum of Rs.10,000/- is hereby awarded towards Transportation charges and for Extra Nourishment, a sum of Rs.3,000/- is hereby enhanced and a sum of Rs.5,000/- is hereby awarded.

14. It is to be noted that the appellant has suffered fracture and grievous injuries all over the body, she was not in a position to walk or to do daily activities, hence definitely a person would have accompanied her to carryout daily activities and the Tribunal has also failed to award any amount, therefore, a sum of Rs.10,000/- is hereby awarded towards Attendant Charges and Rs.5,000/- is awarded towards Loss of Amenities. That apart, considering the fact that the dresses worn by the appellant at the time of accident would have damaged and she would have suffered pain and sufferings due to the grievous sustained by her, viz., fracture of leg and hand injuries coupled with the permanent disability, the Tribunal, in total had awarded a sum of Rs.1,38,500/-.

15. This Court is of the considered view that Rs.1,94,500/- shall be awarded to the Appellant instead of Rs.1,38,500/- awarded by the Tribunal under the impugned Award and the same hereby tabulated for reference.

Sl.	Name of Heads	Amount awarded by the Tribunal	Amount Enhanced/ confirmed amount by this Court
01	Loss of Earning during period of treatment	Rs.9,000	9,000
02	Transportation	Rs.2,000	10,000
03	Extra Nourishment	Rs.2,000	5,000
04	Damages to clothing and articles	Rs.500	500
05	Pain and Suffering	Rs.15,000	30000
06	Partial Permanent disability and loss of earning power	Rs.1,10,000	1,10,000
07	Mental Agony	-	Rs.15,000
08	Attendant Charges	-	Rs.10,000

Sl.	Name of Heads	Amount awarded by the Tribunal	Amount Enhanced/ confirmed amount by this Court
09	Loss of Amenities	-	Rs.5,000
	TOTAL	Rs.1,38,500	Rs.1,94,500

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,38,500/- is hereby enhanced to Rs.1,94,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent insurance company is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.401 of 2010 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Poonamallee, along with interest and costs as determined by this Court, 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 being made, the appellant is permitted to withdraw the amount, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accident Claims Tribunal,
III-Additional District and Sessions Judge,
Poonamallee

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

+1cc to Mr.G.Mannarmannan, Advocate, S.R.No. 5687
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 6734

C.M.A.No.1166 of 2013

AK(CO)
GN(23/11/2020)