

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2675 of 2010

(Through Video Conferencing)

N.Fozia

... Appellant

Vs.

1.Mohammed Usman Gani

2.The New India Assurance Co. Ltd.,
MTPCO, No.45, Moore Street,
Parrys, Chennai - 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decree dated 13.09.2005 in M.C.O.P.No.1384 of 2004 on the file of Motor Accidents Claims Tribunal (VI Judge, Small Causes Court) at Chennai.

For Appellant : N. MANOHARAN
for Amar D.Pandiya

For 2nd Respondent : Mr.M.Krishnamoorthy

J U D G M E N T

The claimant is the appellant. The appellant is aggrieved by the impugned Judgment and Decree dated 13.09.2005 passed by the Motor Accidents Claims Tribunal (VI Judge, Small Causes Courts, Chennai) at Chennai in M.C.O.P.No.1384 of 2004.

2. By the impugned Judgment, the Tribunal has awarded a sum of Rs.1,56,000/- as compensation to the appellant together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of deposit with proportionate costs. The said compensation was awarded by the Tribunal under the following heads:-

Heads	Amount
Transport to Hospital	Rs. 2,000/-
Extra Nourishment	Rs. 3,000/-
Medical Expense	Rs. 71,000/-
Pain and suffering	Rs. 25,000/-
Partial permanent disability	Rs. 55,000/-
Total	Rs.1,56,000/-

3. The case of the appellant is that the Tribunal erred in awarding a very low compensation of Rs.1,56,000/- to the appellant even though the PW.5 has deposed that the total disability of the appellant was 55% and therefore, the Tribunal ought to have awarded a higher compensation towards permanent disability. It is further submitted that the Tribunal has not awarded any compensation towards loss of amenities and therefore, the appellant seeks the compensation towards loss of amenities considering the nature of injuries suffered by her.

4. Defending the impugned Judgment and Decree, Mr.M.Krishnamoorthy the learned counsel for the 2nd respondent submits that the impugned award is well reasoned and requires no interference and therefore, he prayed for dismissal of this Civil Miscellaneous Appeal.

5. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent Insurance Company. I have also perused the evidence on records.

6. The impugned Judgment and Ex.P3 Discharge Summary of Sri Ramachandra Hospital and Ex.P6 CT Scan report confirm that the appellant had burst fracture of C3 vertebra. She was hospitalised for about 9 days as inpatient in both Sri Ramachandra Hospital and thereafter, Dr.Mehta's Nursing Home where she was undergoing treatment.

7. The appellant was aged about 19 years at the time of the accident and was pursuing her studies. The claim petition filed by the appellant shows that there was difficulty in signing by the appellant. Perhaps for the same reason, her thumb impression was also affixed along with the signature which does not show a clean glow in the writing. The nature of injuries, namely, burst fracture of C3 vertebra would compromise quality of life and can lead to hunchback deformity (kyphosis).

8. Considering the nature of injuries suffered by the appellant and considering the period when the accident took place, I am inclined to enhance the compensation towards

permanent disabilities by another sum of Rs.55,000/-. Since the Tribunal has not awarded the compensation towards loss of amenities, a sum of Rs.30,000/- is awarded as per the decision of the Hon'ble Supreme Court in R.D.Kattangadi Vs. Pest Control (India) Pvt. Ltd. and Other, (1995) 1 SCC 551, wherein, the the Hon'ble Supreme Court held as follows:-

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

9. Thus, the compensation of Rs.1,56,000/- awarded by the Tribunal is enhanced by another sum of Rs.85,000/- together with interest. Therefore, the total amount of compensation to be deposited to the appellant by the 2nd respondent Insurance Company is Rs.2,41,000/- (1,56,000 + 85,000).

10. It appears that the certified copy of the impugned Judgment and Decree dated 13.09.2005 was received as early as 24.01.2006. However, no appeal was filed by the appellant till about 28.02.2008. Considering the same, there shall be no interest from the date of receipt of the impugned Judgment (i.e. 24.01.2006) till the date of filing of the present appeal (i.e. 28.02.2008) on the enhanced amount of compensation alone.

11. The 2nd respondent is directed to deposit the compensation of Rs.2,41,000/- (1,56,000 + 85,000) together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of deposit and proportionate costs, less any amount already deposited by it, within a period of eight weeks from the date of receipt of a copy of this Judgment before the Tribunal. While computing the interest, no interest shall be paid for the aforesaid period (i.e, from 24.01.2006 to 28.02.2008) on the enhanced amount of compensation of Rs.85,000/-.

12. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn by her, by filing suitable application before the Tribunal.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

Motor Accidents Claims Tribunal
VI Judge, Small Causes Court), Chennai.

Copy To: The Section Officer,
V R Section,
High Court Madras.

+1 cc to M/s. Amar.D.Pandiya, Advocate Sr.No. 35722

C.M.A.No.2675 of 2010

VSNII(CO)
RMP(10/06/2021)

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