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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.69 of 2010

(Through Video Conferencing)

Kamalam

... Appellant/Petitioner

Vs.

1. The Managing Director,
M/s.K.P.N. Tours and Travels Pvt. Ltd.,
Chikka Bajane Mandir Street,
Sarjapura Post, Anekal Taluk,
Bangalore District.

2. National Insurance Co. Ltd.,
Divisional Office, Balaji Towers,
11, Ramakrishna Road,
Salem - 7.

3. Wilson

4. The New India Assurance Co. Ltd.,
Mortgage Bank Building,
Rest House Compound,
Kollam, Kerala - 691 001.

... Respondents/Respondents

Respondents 3 & 4 given up as the award is
passed against 1 & 2 respondents only)

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the order and decretal order dated
27.08.2009 made in M.C.O.P.No.219 of 2006 on the file of the
Additional District Judge - Fast Track Court No.1, Salem.

For Appellant : Mr.Sivakumar

For 2nd Respondent : M/s.N.B.Surekha



J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal. She is aggrieved by the impugned Judgment and Decree dated 27.08.2009 passed by the Motor Accident Claims Tribunal (Additional District Judge - Fast Track Court No.1), Salem in M.C.O.P.No.219 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.6,07,737/- as compensation together with interest at 7.5% per annum from the date of claim petition till realisation and proportionate costs to the appellant for the injuries suffered by her. The Tribunal has awarded the aforesaid compensation under the following heads:-

Heads	Amount
Injuries	Rs. 8,000/-
Medical Bills	Rs.5,49,737/-
Disability (50 x 1000)	Rs. 50,000/-
Total	Rs.6,07,737/-

3. It is the case of the appellant that the Tribunal erred in awarding a low compensation for the injuries suffered by her. The brief facts of the case are that on 28.12.2005 at about 12.15 a.m., when the appellant was travelling in the K.P.N. Bus bearing registration number KA-05-AE-1 insured with the 2nd respondent Insurance Company from Salem to Thirunelveli on Bangalore to Madurai N.H.7 Road, near Kanagapuri Stream Bridge, the driver of the bus drove the bus in a rash and negligent manner and dashed against a lorry bearing registration number KL-02-S-3200 belonging to the 3rd respondent Insured with the 4th respondent which was going in front of the bus, as a result of which, four persons died and many passengers including the appellant sustained injuries. The appellant was admitted in Amaravathi Hospital, Karur and thereafter was shifted to Ganga Hospital, Coimbatore. As per the claim petition, due to the accident, the appellant sustained the following injuries:-

- i. Multiple fractures on the left leg with Tissues loss
- ii. Nerve cut on the left leg
- iii. Lungs injury - Respiratory problems,
- iv. Multiple injuries all over the body.

4. Therefore, the appellant filed a claim petition for compensation of Rs.25,00,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.6,07,737/-. Aggrieved by the same, the appellant has filed this Civil Miscellaneous Appeal for enhancement of compensation by another sum of Rs.10,02,263/-.



5. The learned counsel for the appellant submits that the appellant was earning income from a rental property and also from a business carried out by her in agriculture and that due to the injuries, she was out of action. It is further submitted that the Tribunal has not awarded any amount under the conventional heads such as pain and sufferings, extra nourishment, transportation, loss of earning and loss of amenities.

6. It is further submitted that a sum of Rs.50,000/- awarded by the Tribunal at the rate of 1,000/- per percentage for 50% disability was disproportionate to the nature of injuries suffered by the appellant. It is further submitted that though the Tribunal has examined the Ex.A2 which records the nature of multiple injuries suffered by the appellant, namely, injuries over forehead and left leg, the Tribunal has awarded a sum of Rs.8,000/- only towards injuries.

7. Defending the impugned Judgment and Decree, the learned counsel for the 2nd respondent Insurance Company submits that the impugned Judgment was well reasoned and requires no interference.

8. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 2nd respondent Insurance Company. I have also perused the evidences on record and the impugned Judgment and Decree passed by the Tribunal.

9. The appellant has shown that she has income both from rental property and from Money Lending and Dairy Business carried out by her and had filed Ex.A13 Income Tax Assessment Form to that effect. For the Assessment Year 2003-04, the appellant has shown a taxable income of Rs.89,644/-, i.e., income from House Property of Rs.28,644/- and Rs.61,000/- as income from business. The appellant has also paid a sum of Rs.2,144/- as tax for the income earned by her. Therefore, it is reasonable to consider the monthly income of Rs.9,000/- of the appellant for the purpose of awarding compensation under the head of loss of earning income for the period of six months.

10. As per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343, the Tribunal has to arrive at a functional disability for awarding compensation in the case of permanent disability or partial permanent disability. In this case, there is temporary disability and injury. Overall a sum of Rs.58,000/- (50,000 + 8,000) has been awarded towards injuries and disability for the injuries suffered by the appellant. The physician who was examined as P.W.2 has assessed 50% disability. However, there is no assessment of permanent disability.



11. Considering the nature of injuries suffered by the appellant, I am of the view that the Tribunal ought to have awarded little more compensation as the driver of the bus drove the bus in a rash and negligent manner which resulted in the accident and injuries to the appellant. Considering the nature of injuries suffered by the appellant, a sum of Rs.75,000/- is awarded towards injuries instead of the amount of Rs.58,000/- (50,000 + 8,000) awarded by the Tribunal towards disability and injuries.

12. Since the Tribunal has not awarded any amount towards other conventional heads, the compensation of Rs.6,07,737/- awarded by the Tribunal is enhanced including the conventional heads as follows:-

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Disability	Rs.50,000/-	* Rs. 75,000/-
Injuries	Rs. 8,000/-	
Loss of earning for 6 months (9,000 x 6)	-	Rs. 54,000/-
Medical Expenses	Rs.5,49,737/-	Rs.5,49,737/-
Pain and Suffering	-	Rs. 25,000/-
Extra Nourishment	-	Rs. 7,500/-
Transportation	-	Rs. 10,000/-
Attender Charges	-	Rs. 10,000/-
Total	Rs.6,07,737/-	Rs.7,31,237/- rounded off to Rs.7,32,000/-

* Rs.1,500 x 50 = Rs.75,000/-

Thus, the compensation of Rs.6,07,737/- awarded by the Tribunal is enhanced to Rs.7,32,000/-.

13. Though the Tribunal had directed to 1st and 2nd respondents to deposit the compensation jointly and severally, to meet the ends of justice, the 2nd respondent Insurance Company is directed to pay the compensation to the appellant as contract of insurance is a contract of indemnity to indemnify the 1st respondent owner of the vehicle against any liability that may be fastened against the owner of the insured vehicle under the Motor Vehicles Act, 1988.



14. Therefore, the 2nd respondent Insurance Company is directed to deposit the aforesaid compensation of Rs.7,32,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs awarded by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

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

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Fast Track Court No.1, Salem.

Copy to

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

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.42786

C.M.A.No.69 of 2010

AJS (CO)
GMY (08/09/2021)