

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.1491 OF 2013

M.Meerabai

... Appellant/Petitioner

Vs.

1. S.Rajapandian
(R1 set ex-parte before Trial Court)
2. United India Insurance Co. Ltd.,
Chander Plaza, 1st Floor,
No.48, Arcot Road, Saligramam,
Chennai - 600 093. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 18.10.2012 made in MACT.O.P.No.4797 of 2008 on the file of the XVI Additional Judge, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.N.M.Muthurajan
For Respondents : R1 - Exparte
Mrs.R.Vijaya Kamala for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed aggrieved by the judgment and decree dated 18.10.2012 made in MACT.O.P.No.4797 of 2008 on the file of the XVI Additional Judge, (Motor Accidents Claims Tribunal), Chennai.

2.The case of the Appellant is that the appellant is a self employer, aged about 55 years and used to earn Rs.150/- per day. On 13.03.2008 at 17.30 hours the appellant was walking along Arcot Road Virugambakkam, east to west direction. While she was so walking opposite to Door No.34, the Motorcycle TN-09-AR-0842 which was driven in a rash speed and negligent manner came from behind and hit against the pedestrian in which the petitioner sustained injuries. Hence this application claiming a sum of Rs.2,00,000/-. The first respondent's vehicle was insured with the second respondent and hence the respondents 1 and 2 are jointly and severally liable.

3.The learned counsel for the appellant submitted that the Trial Court erred in awarding Rs.14,325/- for an injury. Even under no fault liability the statutory compensation awardable is Rs.25,000/-. The appellant suffered head injuries. Initially she was treated at Arokiya Hospital, Virugambakkam. Then she was treated as inpatient at Sooriya Hospital, Saligramam from 13.03.2008 to 14.03.2008. The appellant made a claim of Rs.40,000/- for pain and suffering. However, the learned Tribunal clubbed the same in awarding compensation under the head of transport expenses and extra nourishment. These heads are distinct and the learned Tribunal ought to have awarded separate compensation under these heads.

4.The learned counsel for the appellant further submitted that the appellant is a flower vendor and she was earning Rs.150/- per day at the time of accident. She was treated as inpatient and outpatient for more than 4 month. The appellant is suffering with loss of earning. However, the learned Tribunal not even considered this head is not correct. The Trial Court failed to award loss of amenities of life. The compensation awarded for transport to hospital, extra nourishment and dress materials damaged are on the lower side. In any event, the lower court in awarding compensation of Rs.14,345/- against the claim of Rs.2,00,000/- is unsustainable in law and the lower court ought to have awarded as prayed.

5.Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

6.On perusal of the records, it is observed that the appellant examined herself as PW1 and marked certain documents on her side as Exs.P1 to P8. On the side of the respondents, neither any witness was examined nor any document was marked.

7.The Tribunal has not awarded any amount towards loss of earning. After the treatment, the appellant definitely would have suffered from loss of earning for a period of two months and considering the same, this Court is inclined to award Rs.6,000/- (i.e. Rs.3,000/- per month) for the said head. Accordingly, a sum of Rs.6,000/- is hereby awarded for loss of earning. The Tribunal altogether awarded only a sum of Rs.10,000/- towards pain and suffering, transport expenses on attender and extra nourishment, which is very meagre. This Court is inclined to separate the said heads and award Rs.14,000/- for pain and suffering with future disability, Rs.2,000/- each for transport and extra nourishment. Accordingly, a sum of Rs.14,000/- is awarded towards pain and suffering with future disability and Rs.2,000/- each towards transport and extra

nourishment. The Tribunal failed to award compensation towards damage to cloth and this Court is inclined to award the same. Accordingly, a sum of Rs.500/- is awarded towards damage to cloth.

8.In view of the above observations, the compensation awarded by the Tribunal is modified as follows:

S.No.	Description	Amount awarded by the Tribunal	Amount awarded/ modified by this Court
1.	Pain and suffering, transport expenses on attender and extra nourishment	Rs.10,000/-	-
2.	Medical bills	Rs.4,345/-	Rs.6,720/-
3.	Loss of earning for 2 months	-	Rs.6,000/- (Rs.3,000/- x 2
4.	Transport expenses	-	Rs.2,000/-
5.	Extra nourishment	-	Rs.2,000/-
6.	Damage to cloth	-	Rs.500/-
7.	Pain and suffering clubbed with future disability	-	Rs.14,000/-
	Total	Rs.14,345/-	Rs.31,220/-
	Rounded off		Rs.31,250/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent insurance company is directed to deposit the modified amount awarded by this Court with interest at the rate of 6% per annum from the date of petition till the date of realization as fixed by this Court, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. After the entire amount has been deposited by the second respondent insurance company, the Appellant can withdraw the same by filing a formal petition before the concerned Court. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Motor Accidents Claims Tribunal
The XVI Additional Judge,
Chennai.

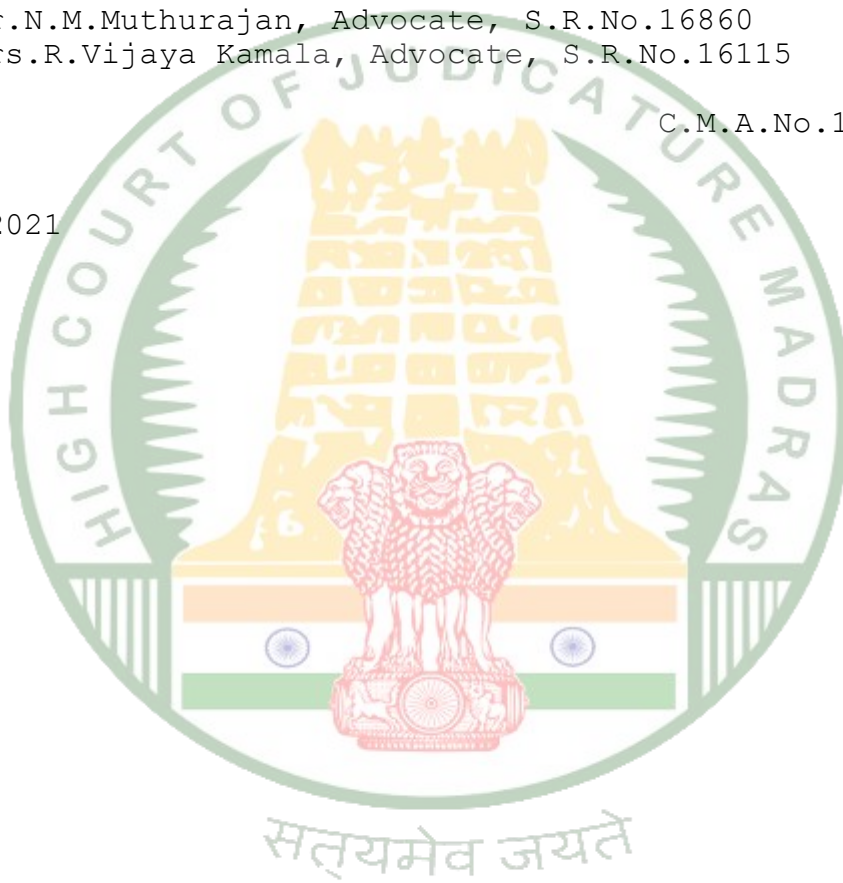
Copy To

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

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.16860
+1cc to Mrs.R.Vijaya Kamala, Advocate, S.R.No.16115

C.M.A.No.1491 of 2013

PA (CO)
CS/03/05/2021



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