

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1691 of 2013

Jayalakshmi

... Appellant/ Petitioner

vs.

1. Velu

2. The Branch Manager,

Bajaj Allianz General Insurance Co. Ltd.,

Vellore.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 23.08.2012 made in MCOP. No.693 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri.

For Appellant : Mr.R.Selvakumar

For Respondents : Mr.N.Somasundar - R2

R1 - Mr.Velu - No appearance

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the claimant seeking enhancement of compensation under the Impugned Award dated 23.08.2012 passed by the Motor Accident Claims Tribunal (Principal District Judge, Dharmapuri) in MCOP.No.693 of 2010.

2.The Appellant/claimant sustained injuries on 14.07.2010 as a result of an accident caused by a lorry bearing registration No.AP 21 T 2354 owned by the first respondent and insured with the second respondent/insurance company.

3. The Appellant/claimant preferred a claim before the Motor Accident Claims Tribunal, Principal District Judge, Vellore, in MCOP.No.693 of 2010 against the respondents seeking compensation of Rs.29,80,000/- for the injuries sustained by her as a result of the accident.

4. The Motor Accident Claims Tribunal, under the impugned award, directed the respondents to pay the appellant/claimant a compensation of Rs.1,72,722/- (wrongly calculated in the

impugned order as Rs.1,78,722/-) together with interest and costs at the rate of 7.5% per annum from the date of claim till the date of realisation for the injuries sustained by her as a result of the accident caused by the aforesaid lorry.

5. The break-up details of the compensation awarded by the Tribunal in favour of the appellant/claimant are as follows:

Sl.No.	Heads	Award passed by the Tribunal (Rs.)
1	Transportation	15,000/-
2	Extra nourishment	10,000/-
3	Medical expenses	57,722/-
4	Pain and suffering	15,000/-
5	Permanent disability	75,000/-
	Total	1,72,722/-

6. The appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award dated 23.08.2012 passed in MCOP.No.693 of 2010, filed this Appeal seeking enhancement of compensation.

7. Heard Mr.R.Selvakumar, learned counsel for the Appellant/claimant and Mr.N.Somasundar, learned counsel appearing for the second respondent/Insurance company and there is no representation for the first respondent.

8. The appellant/claimant sustained the following injuries:

'Bilateral Middle 1/3rd Clavicle fracture, Pelvic Injury - Left Acetabulum fracture, Left sacral ala fracture, Bilateral superior and inferior, public Rami fracture left and right humerus.'

9. Before the Tribunal, the Appellant/claimant has filed 16 documents which were marked as Ex.P1 to Ex.P16 and three witnesses were examined on her side viz., the Appellant/claimant herself as PW2 and the Doctor, who examined her as PW3. On the side of the second respondent/Insurance company, neither any witness was examined nor any document filed before the Tribunal.

10. Before the Tribunal, in the claim petition, the appellant/claimant has pleaded that she is an agriculturist and was maintaining a poultry form and was a self employed person. She was aged 48 years at the time of the accident and was earning Rs.10,000/- per month. Before the Tribunal, no documentary evidence was produced by the appellant/claimant insupport of her age, avocation and her monthly income. Therefore, the Tribunal has depended upon the discharge summary (Ex.P8) for assessing the age of the appellant/claimant. As seen from the discharge summary, the appellant/claimant was aged 60 years at the time of the accident. The Doctor, who assessed the disability of the appellant/claimant, was examined as PW3 and he has issued a disability certificate (Ex.P15) which reveals that the appellant/claimant has suffered 50% disability. The Tribunal has awarded a disability compensation of Rs.75,000/- to the appellant/claimant for 50% disability calculated at Rs.1,500/- per percentage of disability.

11. The contention of the appellant before this Court is that due to the injuries sustained by her as a result of the accident, she has lost half her vision in both her eyes. According to the appellant/claimant, the same was not considered by the Tribunal. The treatment card issued by Aravind Eye Hospital, dated 16.05.2011, was marked through the appellant/claimant as Ex.P13. As seen from Ex.P13, the appellant/claimant has taken treatment in Aravind Eye Hospital for her eyes. But, the said certificate has not revealed as to whether the said injuries to her eye was as a result of the accident caused by the insured vehicle. But, however, the treatment for the eyes, as seen from ex.P13, has been taken by the appellant/claimant in the year 2011 and the accident, which is the subject matter of the appeal took place on 14.07.2010 i.e. less than a year from the date of the accident. Even though, there is no clinching evidence to show that the injury to the eyes of the appellant/claimant was as a result of the accident, it cannot also be totally rejected as there is no contra evidence produced by the respondents before the Tribunal to disprove the contention of the appellant/claimant that she has suffered injuries to her eyes only as a result of the accident.

12. This Court has perused and examined the impugned award. As rightly contended by the learned counsel for the appellant/claimant, Ex.P13 has not been considered by the Tribunal while assessing the disability compensation. The compensation awarded by the Tribunal towards the disability suffered by the appellant/claimant is Rs.75,000/- calculated at Rs.1,500/- per percentage of disability.

13. The accident happened in the year 2010. If due consideration was given to the year of the accident, the Tribunal ought to have awarded a higher compensation to the appellant/claimant. It is settled practice, for the year 2010, the disability compensation is calculated at Rs.2000/- per percentage of disability. However, in the instant case, as seen from Ex.P13, the treatment card issued by the Aravind Eye Hospital, there is a possibility that the eye injuries for which the appellant/claimant has taken treatment was due to the accident caused by the insured vehicle. Therefore, some amount of compensation will have to be awarded under the said disability also. Therefore, this Court is of the considered view that an additional sum of Rs.1,000/- per percentage of disability will have to be awarded to the appellant/claimant towards the disability of her eyes suffered as a result of the accident caused by the insured vehicle. In all put together, this Court awards the disability compensation at Rs.2,500/- per percentage of disability instead of Rs.1,500/- per percentage of disability assessed by the Tribunal under the impugned award. Therefore, for the 50% disability suffered by the appellant/claimant, this Court awards a compensation of Rs.1,25,000/- calculated at Rs.2,500/- per percentage instead of Rs.1,500/- per percentage of the disability calculated by the Tribunal.

14. The appellant/claimant sustained injuries as a result of the accident caused by the insured vehicle and was hospitalised for around 13 days as seen from the discharge summary issued by the hospital, which was marked as Ex.P8 before the Tribunal. Having been hospitalised for a period of 13 days, the Tribunal ought to have awarded a compensation towards attender charges, but has erroneously failed to do so under the impugned award. This Court fixes the same at Rs.10,000/- towards attender charges. The Tribunal has also awarded only a compensation of Rs.15,000/- towards pain and suffering, which in the considered view of this Court is low. Having sustained grievous injuries and eye injuries, this Court is of the considered view that the compensation awarded towards pain and suffering will have to be enhanced to Rs.30,000/- from Rs.15,000/-. With regard to the other heads of compensation, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation and there is no scope for interference.

15. For the foregoing reasons, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Transportation	15,000/-	15,000/-
Pain and suffering	15,000/-	30,000/-
Attender charges		10,000/-
Disability compensation	75,000/-	1,25,000/-
Extra nourishment	10,000/-	10,000/-
Medical expenses	57,722/-	57,772/-
Total	1,72,722/-	2,47,772/-

16. The Tribunal has committed a calculation mistake while assessing the total compensation payable to the appellant/claimant. The total compensation under the impugned award works out to only Rs.1,72,722/- and not Rs.1,78,722/-

Conclusion:

17. In the result, the Appeal is partly allowed by enhancing the award amount from Rs.1,72,722/- to Rs.2,47,772/-. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent/insurance company is directed to deposit the entire award amount of Rs.2,47,772/- together with interest from the date of claim till

the date of realisation and costs, after deducting the amount, if any, already deposited, to the credit of MCOP.No.693 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the Appellant/claimant through RTGS within a period of four weeks, thereafter. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal
Dharmapuri.

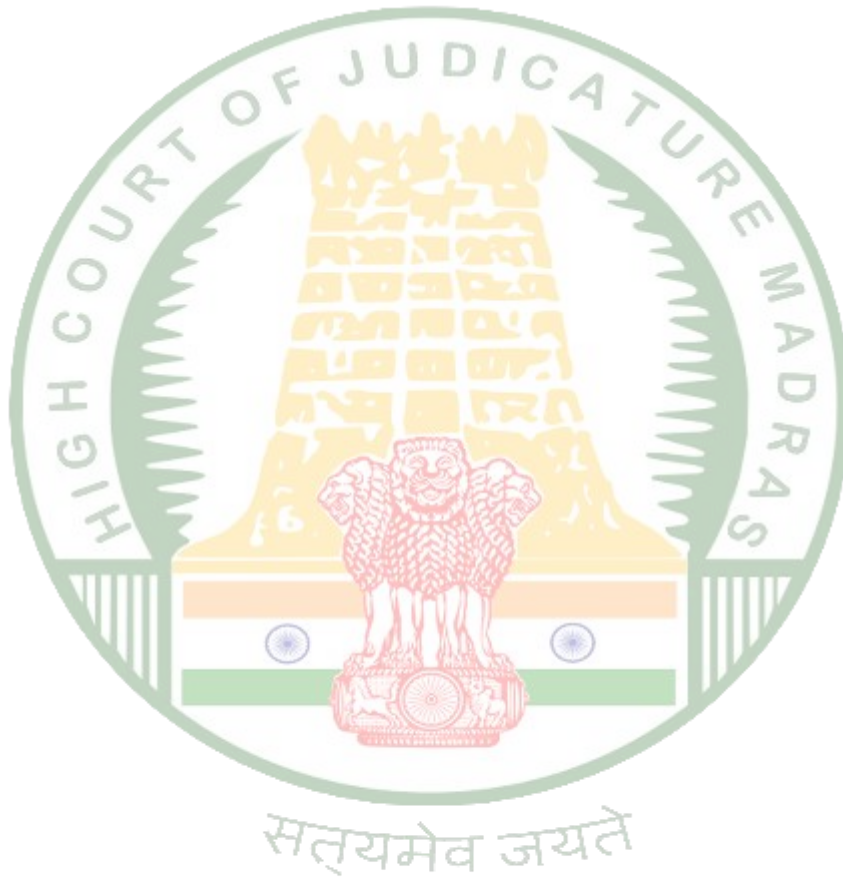
2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.R.Selvakumar , Advocate SR.No. 29544

+1cc to Mr.N.Somasundar, Advocate SR.No. 29545

C.M.A.No.1691 of 2013

A.SK(15.03.2021)



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