

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1837 of 2013

Buela Jebathai

... Appellant/Claimant

Vs.

1. M/s Shree Loganayaki Textiles Limited,
New No.65, CIT Nagar, First Main Road,
Sri Devi Apartments, Chennai 6000 035.

2. M/s United India Insurance Company Limited,
Motor Third Party Claims Office,
No.38, Anna Salai, Chennai - 600 032.

... Respondents/ Respondents

Prayer: This petition is filed Under Section 173 of Motor Vehicles Act 1988 against the award and decree made in M.C.O.P.No.4941 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Session Court, Fast Track Court - IV, Chennai dated 20.10.2008.

For Appellant : Mr.T.G. Balachandran

For Respondent-2 : Mr.D. Bhaskaran

JUDGMENT

This petition has been filed by the appellant against the award and decree dated 20.10.2008 made in M.C.O.P.No.4941 of 2002 on the file of the Motor Accident Claims Tribunal, Chennai, Additional District Session Court, Fast Track Court - IV.

2.The necessary relevant facts are stated hereunder to find out whether the appellant is entitled for relief as prayed in this appeal:

The case of the appellant/claimant is that on 04.09.2002 at about 7:45 p.m when she was walking in Anna

Salai near Apollo Hospital, a car bearing Registration No.T.N.37-U-2426 came in the opposite direction and dashed against the claimant. As a result of which the claimant fell down and sustained severe head injuries. Hence, she filed a claim petition before the Tribunal seeking Rs.2,20,500/- as compensation for the injuries sustained in the accident.

3. Not being satisfied with the award passed by the Tribunal the Appellant has come forward with the present appeal.

4. Before the Tribunal on the side of the appellant, two witnesses was examined as P.W.1 and P.W.2 and documents Ex.P.1 to Ex.P.8 were adduced. On the side of the respondents, no witness was examined and no documents was let in.

5.The learned counsel for the appellant/claimant contended that the Court below has awarded only Rs.40,000/- as total compensation, which is very low. He would further contend that the appellant sustained head injury and fractures in Tibia of left leg besides ligamentary tear in her left knee and the Doctor also assessed 40% as disability. But, the Tribunal has not awarded any amount towards the head disability. In any event the amount awarded by the Tribunal is very low when compared to the injuries sustained by the appellant and prays to allow the appeal.

6.Per Contra the learned counsel for the second respondent/Insurance Company submitted that the injuries sustained by the appellant are simple in nature but she exaggerated the same as permanent disability in order to claim huge amount as compensation.

7. With regard to negligence aspect the learned Judge before the Tribunal in point no.1 has discussed elaborately, that the accident has occurred due to the negligence on the part of the injured or due to the negligence on the part of the driver of the car. After analysing Exs.P.1 to P.4 i.e F.I.R report, Sketch, charge sheet and Discharge summary the Tribunal arrived at a conclusion that the driver of the car is the cause for the accident. Therefore, the finding of the Tribunal is perfectly valid in the eye of law and no interference is required.

8. With regard to quantum, considering the nature of injuries, the Tribunal has awarded Rs.10,000/- and

Rs.5,000/- towards pain and sufferings and Extra Nourishment respectively. Apart from this Rs.25,000/- was awarded towards injuries.

9. This Court on re-appreciating the evidence the medical records of the appellant observed that the appellant sustained Cerebral Concussion, Avulsion Fracture Deep part of lateral collateral ligament and Anterior cruciated ligament in the head. The appellant also sustained injuries in lateral aspect of left knee. Due to the accident the appellant sustained Tenderness over lateral condyle and Tenderness over the left hand with swelling. It is also seen that the Tribunal has not awarded any amount towards the head Disability and loss of income. The Tribunal has granted Rs.25,000/- towards the head injury but, considering the disabilities suffered by the appellant, this Court is inclined to modify the same by taking note of Ex.P.8/ Disability Certificate and award Rs.1,000/- per percentage and quantify Rs.40,000/- (Rs.1,000 x 40%) towards the head disability. Moreover, the amount awarded under the head pain and sufferings and Extra Nourishment seems to be very meager. Hence the same is enhanced to Rs.15,000/- and Rs.10,000/- respectively. Apart from this Rs.5,000/- each is awarded towards the head Loss of amenities and Transportation . The Tribunal has not awarded any amount towards the head loss of income. In the claim petition it has been stated that the appellant was working as staff nurse and thereby earning Rs.5,500/- per month. Therefore, this Court is of the view that due to the accident the appellant may not be able to go for job for atleast 2 months hence, Rs.10,000/- is granted towards the said head. Thus, the award passed by this Court is as follows:

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Injuries	Rs.25,000/-	-Nil-
2	Pain and sufferings	Rs.10,000/-	Rs.15,000/-
3	Extra Nourishment	Rs.5,000/-	Rs.10,000/-
4	Loss of Amenities	-Nil-	Rs.5,000/-
5	Transportation	-Nil-	Rs.5,000/-
6	Loss of Income	-Nil-	Rs.10,000/-
7	Disability	-Nil	Rs.40,000/-

S.No .	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
	Total	Rs.40,000/-	Rs.85,000/-

Thus, the award amount is enhanced to Rs.85,000/- from Rs.40,000/-

10. With the above said modification this appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount awarded by this Court with 7.5% p.a from the date of petition till the date of realization, less the amount already deposited if any, within a period of 8 weeks from the date of receipt of a copy of this Judgment. After making such deposit the claimant/ appellant is permitted to withdraw the amount, by making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1 The. Motor Accident Claims Tribunal, Chennai,
Additional District Session Court, Fast Track Court - IV

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

+1cc to Mr.T.G.Balachandran , Advocate SR.No. 12961

+1cc to Mr.D.Bhasakaran , Advocate SR.No. 12951

C.M.A.No.1837 of 2013

A.SK(21.01.2021)