

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2100 of 2012
(Through Video Conferencing)

Jayanthi

... Appellant/Claimant

Vs.

1.Gnana Sigamani

2. United India Ins.Co., Ltd.,

No.48, Arcot Salai,

Saligramam, Chennai-93

(1st respondent exparte in

lower court. Hence notice may be

dispensed with)

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.02.2012 made in M.C.O.P.No.364 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Fast Track Court No.I, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For 2nd Respondent : Mr.G.Udaya Sankar

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the impugned Judgment and Decree dated 29.02.2012 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Court), Fast Track Court No.I, Poonamallee in M.C.O.P.No.364 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.90,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant. Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed by the appellant/claimant for enhancement of compensation.

3. The appellant-claimant met with an accident on 14.04.2007 at about 3.30 p.m. According to the appellant, she was travelling in a share auto bearing Reg.No.TN 04 U 0923 belonging to the 1st respondent insured with the 2nd respondent Insurance Company. It was driven by its driver in a rash and

negligent manner and at a high speed. The said share auto dashed against a stationary container lorry, as a result of which, the appellant sustained grievous injuries.

4. The Tribunal awarded the aforesaid compensation of Rs.90,000/- by considering the notional income of the appellant as Rs.15,000/- and 35% disability as follows :

$\text{Rs.2,55,000} \times 35\% = \text{Rs.89,250/-}$ rounded off to Rs.90,000/-.

5. The learned counsel for the appellant submits that the Tribunal erred in awarding a low compensation of Rs.90,000/- even though the appellant had suffered injury which resulted in permanent impairment rendering the appellant incapable of working as a beautician as the work involves dexterity and use of hands. He further submits that the Tribunal has not awarded any amounts towards medical expenses incurred for a sum of Rs.1,22,660/- even though the appellant had furnished bills.

6. Learned counsel for the respondent-Insurance Company submitted that the impugned Judgment and Decree is well reasoned and requires no interference. Therefore submits this appeal is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the appellants/claimants. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

8. The Hon'ble Supreme Court in United India Insurance Company Limited Vs. Sunil Kumar and Another, (2019) 12 SCC 398, has clarified that "compensation under Section 140 of the Act was thus understood to be in the nature of an interim payment pending the final award under Section 166 of the Act. Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a structured formula without any reference to fault liability".

9. The Hon'ble Supreme Court further held as follows:-

8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section

of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.

10. Considering the above, I am not inclined to any award amount over and above prescribed under the II schedule of the Act.

11. From the materials available on record, it is seen that the Tribunal has held that the accident has occurred only due to rash and negligent driving of the share auto by its driver belonging to the 1st respondent. The appellant had sustained fracture of both bones in right hand F.A. with radian eve palsy . The appellant has taken treatment as an inpatient from 14.04.2007 to 28.05.2007, 02.08.2007 to 23.08.2007 and 02.11.2007 to 10.12.2007. The physician who deposed the evidence as P.W.3 has assessed the disability as 45%. The Tribunal has considered the functional disability as 35% due to permanent disability. Ex.P.8 -Impairment Certificate issued by P.W.4 Ortho Surgeon has assessed 50% Permanent disability .

12. It is noticed that the Tribunal has considered a very low notional income of Rs.15,000/- p.a. for arriving at the aforesaid compensation of Rs.90,000/- under Section 163(A) of the M.V.Act. A maximum amount of compensation that can be awarded by the Tribunal to a claimant whose income is below Rs.40,000/- p.a. Declaration of annual income of Rs.33,000/- by the appellant appears to be reasonable. Therefore, the Tribunal ought to have considered the same while awarding the compensation to the appellant.

13. The Tribunal has considered 35% disability. However, considering the nature of injury suffered by the appellant and fracture of both the bones in the right hand F.A with radian eve palsy, implying paralysis of the right hand and considering the fact that the appellant was a beautician, I am inclined to consider functional disability due to permanent partial disability of the appellant as 40%. The Tribunal also ought to have awarded amounts spent towards medical treatment. However, there are no records to substantiate the same. Therefore, same cannot be awarded in absence of proof.

14. Accordingly, I am inclined to partially allow this appeal by modifying the compensation. The compensation is therefore re-quantified as follows:

S.No.	Heads	Amount awarded by this Court
1	Permanent Disability (Rs.3,300x12x16x30/100)	Rs.2,53,440/-
2	Pain and suffering	Rs. 5,000/-
	Total	Rs.2,58,440/-

15. The 2nd respondent-Insurance Company is therefore directed to deposit the re-quantified amount of compensation of Rs.2,58,440/- together with interest at 7.5% per annum from the date of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

16. On such deposit, the appellant is permitted to withdraw the same together with interest, by filing suitable application before the Tribunal.

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

Sd/-
Assistant Registrar (CS-II)
//True Copy//

Sub Assistant Registrar

kkd

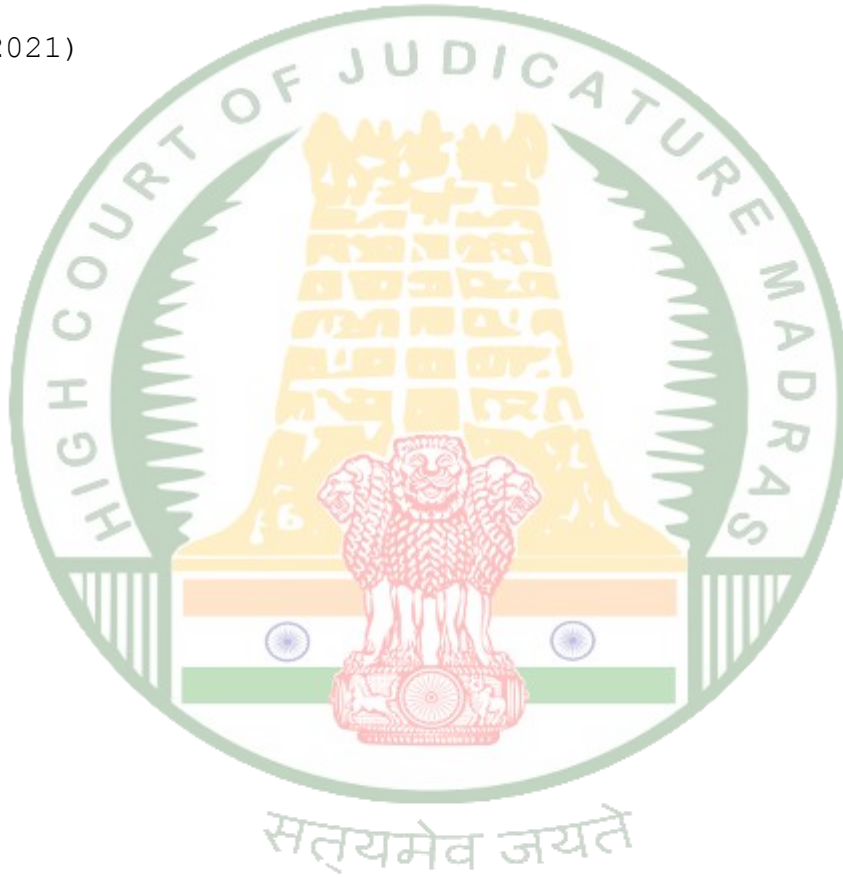
To:

The Motor Accidents Claims Tribunal,
(Additional District and Sessions Court),
Fast Track Court No.I, Poonamallee.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 28723
+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No. 28597

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SV (CO)
GN(22/04/2021)



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