

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2843 of 2011

J. Madhavi

..Appellant/Petitioner

Versus

1.S.M. Fakkirudeen

2.The United India Insurance Co. Ltd.,
Branch Office, Post Box No.172,
No.261, Jawaharlal Nehru Street,
Pondicherry.

3.Dr. V.Sathishkumar

4.The New India Assurance Co. Ltd.
Branch Office,
No.1, Bharathi Road, 2nd Floor,
Arcot Woodlands Complex, Cuddalore

5.The District Collector,
Cuddalore District, Cuddalore ..Respondents/Respondents
(impleaded the 5th Respondent vide order dated
26.08.2011 in M.P. No.2/2008 in C.M.A.No.Sr. 54571/2006)

Prayer: Civil Miscellaneous Appeal filed against the order and
decree dated 16.03.2006 made in M.C.O.P.No.624 of 2004 on the
file of the Motor Accident Claims Tribunal, Chief Judicial
Magistrate, Cuddalore.

For Appellant : Mr.R. Amardeep
For Respondent-2 : Mr. J. Jagadev
For Respondent-4 : Mr.J. Chandran
For Respondent-5 : Mr.S. Jaganathan
Government Advocate (CS)
R1 & R3 - Ex-parte

J U D G M E N T

This appeal has been filed by the appellant against the
Judgment and order in M.C.O.P.No.624 of 2004 dated 16.03.2006 on
the file of the Motor Accident Claims Tribunal, Chief Judicial
Magistrate, Cuddalore.

2. This appeal is filed by the claimant having not satisfied with the award passed by the Tribunal and seeking for enhancement of the compensation. The case of the appellant is that on 08.03.2000, the appellant being minor and a student in 6th standard in St. Anne's Girls Higher Secondary School, Cuddalore, was travelling in the 3rd respondent's bus to her school from Varakalpattu to Cuddalore. At about 8.45 a.m. when the 3rd respondent's bus was nearing Nathapattu Hindu Mission Hospital, the 1st respondent's lorry which was going in the opposite direction driven by its driver in a rash and negligent manner dashed against the 3rd respondent's bus on the rear right side and caused the accident. In the accident, the claimant has sustained severe injuries due to which she has filed claim petition in M.C.O.P. No.624 of 2004 seeking for compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) on the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore.

3. On consideration of the materials and evidence available on the record, the Tribunal has awarded a total compensation of Rs.3,80,000/- (Rupees Three Lakhs and Eighty Thousand Only) to the appellant on various other heads along with interest @ 7.5% p.a. from the date of filing the petition till the date of the deposit by disallowing only the interest from the period of claim petition was rejected for default and till it was taken on file. i.e. between 15.11.2005 to 02.01.2006.

4. Aggrieved over the same, the claimant has filed the present appeal seeking for enhancement of the compensation awarded by the tribunal.

5. The learned counsel appearing on behalf of the appellant submits that the Tribunal has awarded a meagre sum of Rs.3,80,000/- (Rupees Three Lakhs and Eighty Thousand Only) without taking into consideration the nature of injuries suffered by the appellant in the said accident, not only her education has come to an end but also her future matrimonial prospect are also adversely affected and thus, she is entitled to a higher amount of compensation.

6. On the other hand, the learned Counsel for both the Insurance Company would jointly submit that the appellant, admittedly, did not have any income as being a school student, and the loss has to be determined as on the date of accident. Hence, the award of the Tribunal should not be interfered with.

7. Heard both side and perused the available materials on records.

8. During the trial, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.14 were marked on the side of the appellant. None was examined and no exhibits were marked on the side of the respondents before the Tribunal.

9. The factum of the accident and the manner of the accident has to be rash and negligence on the part of the drivers of both vehicles according to the findings of the Tribunal and entitlement of the claimant/appellant herein under Section 163A is not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

10. After going through the oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P.6, disability certificate, this Court is of the considered view that since the appellant was a student at the time of the accident and she suffered the injuries and the fractures which caused to be lost her right limb and to the extent @85% permanent disability, it will be appropriate to fix her permanent disability @85% as certified by P.W.2 instead of 80% permanent disability fixed by the Tribunal. Thus, other heads inclusive of the compensation under the head of permanent disability are modified as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent Disability	2,00,000.00
2	Future loss of income	2,00,000.00
3	Extra-nourishment	10,000.00
4	Pain, shock and Sufferings	25,000.00
5	Artificial Limb (if it will be fixed in future)	10,000.00
6	Medical Expenses	15,000.00
1 Amount	Tota	4,60,000.00

11. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.80,000/- from Rs.3,80,000/- to Rs.4,60,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit excluding the period from 15.11.2005 to 02.01.2006 for the aforesaid reason. It is to be noted that the interest for the compensation under the Artificial Limb is not

entitled by the appellant and the compensation for Artificial limb will be entitled after fixing the same. As the appellant would have now attained majority, both the Insurance Company is directed to deposit the award amount enhanced by this Court, equally, ie.50:50, as both the vehicles is liable equally for the accident, after deducting the amount already deposited if any, within a period of three weeks from the date of receipt of copy of this order and on such deposit, the appellant/claimant is permitted to withdraw the same along with the interest after paying appropriate Court fee for enhancement of the compensation.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

lbm

Copy to:

1.Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Cuddalore.

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

+1 CC to Mr.V. Kannan, Advocate sr 8224
+1 CC to Mr.J.Chandran, Advocate sr 9134.
+1 Cc to The Special Government Pleader(CS) sr 8360.

C.M.A.No.2843 of 2011

NMI (CO)
SP(18/09/2020)