

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2963 of 2011

Rani

... Appellant/Claimant

Vs.

1. Kalaivanan ...1st Respondent/1st Respondent

2. Divisional Manager,
United India Insurance Company Limited,
No.46, Katpadi Road, Vellore.

... 2nd Respondent/2nd Respondent

(R-1 set exparte in the Lower Court)

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 17.08.2010 made in MACT.O.P.No.80 of 2004 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mrs.Subadra
For M/s.M.Malar

For R2 : Mr.D.Bhaskaran

R1 - Exparte

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 17.08.2010 made in MACT.O.P.No.80 of 2004 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Tiruvannamalai.

2. The case of the appellant is that on 10.06.2002 at about 06.30 p.m., while the appellant was traveling as one of the passengers in the first respondent's Car bearing Registration No.TN-21-W-5015 from Tindivanam towards Tiruvannamalai, the first respondent drove the Car in a rash and negligent manner and hit against an another Car bearing Registration No.BYX 7979 which was parked on the side of the road. Due to the impact, the appellant and other passengers of the first respondent's Car had sustained grievous injuries. Hence, they were immediately admitted in the Government General Hospital at Thiruvannamalai. At the time of accident, the appellant was aged 28, and before the accident, she was doing Coole work and was earning Rs.3,000/- per month. Due to

the injuries sustained in the accident, she became permanently disabled. Hence she filed a petition before the Learned Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Tiruvannamalai, claiming Rs.5,00,000/- as compensation from the first and second respondents as they are the owner and insurer of the Car, Registration No.TN-21-W-5015.

3. Denying the allegations, the second respondent insurance company filed a counter affidavit stating that at first, the accident was not happened due to the rash and negligent driving of the first respondent and also at the time of accident, the appellant was not in the vehicle. Further, it has been stated that the appellant has to strictly prove that the alleged vehicle belongs to the first respondent and had been insured with them at the time of accident. Moreover, it has been stated that the alleged age, income, occupation and nature of injuries are totally false and the amount of compensation claimed is highly excessive.

4. During the trial before the Tribunal, on the side of the appellant, the appellant herself was examined as PW1 and has marked certain documents as Exs.P1 to P14, and she has also examined four doctors as PW2 to PW5 on her side. The respondents neither examined any witness nor marked any document on their side.

5. The Learned Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Tiruvannamalai, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.1,75,000/- as compensation as follows :

S.No.	Description	Amount
1.	Attender Charges, Doctor Fees and Future Medical Expenses	50,000
2.	Pain and Sufferings	25,000
3.	Partial Permanent Disability	70,000
4.	Loss of Earning Capacity	30,000
	Total	1,75,000

6. Aggrieved by the said award, the appellant/claimant has filed this appeal before this Court seeking for enhancement of the same.

7. The learned counsel appearing for the appellant would submit that due to the accident, the appellant has entirely lost her sight in the right eye and has also got fracture in her left hand below the elbow. The doctors who examined the appellant have assessed 85% partial permanent disability. The

compensation towards the said head and the same has to be corrected by this Court.

8. The learned counsel appearing for the second respondent would submit that the policy taken by the appellant is an Act policy, as per which, she is not entitled to any compensation from them. Further, he would submit that the appellant's name was not mentioned in the FIR and therefore, they are not liable to pay any compensation to her.

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

10. On perusal of the award dated 17.08.2010 passed by the Chief Judicial Magistrate (Motor Accidents Claims Tribunal), Tiruvannamalai, it is observed that the appellant in order to prove that the first respondent was the cause for the alleged accident marked FIR copy as Ex.P1 which was against the first respondent, but the respondents have not marked any document on their side to disprove the same, and therefore, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the second respondent. Further, it is observed that the policy taken from the second respondent was in existence at the time of accident and the same has been proved in the FIR, and therefore, the Tribunal has held that the second respondent is liable to compensate the claimant.

11. It is also observed from the award of the Court below that the appellant has not marked any medical bills to prove the expenses made for the treatment, but has examined four doctors, namely, Thiru.Ravikumar, Thiru.Ponnappan, Thiru.Somasundaram and Thiru.Ravindran as Exs.P2 to P5. The doctor Somasundaram has stated in his deposition that when he examined the appellant, he found that the appellant has entirely lost her sight in the right eye and thus, she has sustained 50% permanent disability. The doctor Ravikumar also stated in his deposition that the appellant has lost her sight in the right eye, and the PW5 Ravindran has stated in his deposition that when he examined the appellant, he found that the appellant has got fracture in her left hand below the elbow and thus, she has sustained 35% disability. Even though the doctor Ravindran has assessed 35% disability, during his cross examination, he has stated that he could not say exactly whether the appellant had sustained injuries due to the accident, and therefore, the Tribunal has reduced it to 20%, and fixed the total partial permanent disability as 70% i.e. 50% for loss of eye sight and 20% for fracture. However, the Tribunal has failed to adopt multiplier method while calculating the amount towards partial permanent disability and therefore, this Court is inclined to adopt the same. At the time of accident, the appellant was aged 28. As per the case reported in 2009 ACJ 1298 [Sarla Verma and others vs

Delhi Transport Corporation and another], the multiplier for a person aged 28 is 17, and this Court is inclined to adopt the same. The appellant has stated in her petition that before the accident, she was doing Coolie work and was earning Rs.3,000/- per month. But, since she has not marked any document to prove the same, this Court fixes Rs.2,000/- as her Minimum income and awards Rs.2,85,600/- (2000 x 12 x 17 x 70%) towards Partial Permanent Disability. The sums awarded under the other heads i.e. Rs.30,000/- for Loss of Earning Capacity, Rs.25,000/- for Pain & Sufferings and Rs.50,000/- for Attender Charges, Doctor Fees and Future Medical Expenses, have been reasonably awarded by the Tribunal and hence, the same need not any interference of this Court.

12. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S.No .	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or enhanced or granted
1.	Attender Charges, Doctor Fees and Future Medical Expenses	50,000	50,000	Confirmed
2.	Pain and Sufferings	25,000	25,000	Confirmed
3.	Partial Permanent Disability	70,000	2,85,600	Enhanced
4.	Loss of Earning Capacity	30,000	30,000	Confirmed
	Total	1,75,000	3,90,600	Enhanced by 2,15,600/-

13. Accordingly, the second respondent insurance company is directed to deposit the said amount of Rs.3,90,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court, less the amount if any, already withdrawn.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(ADI MDU)

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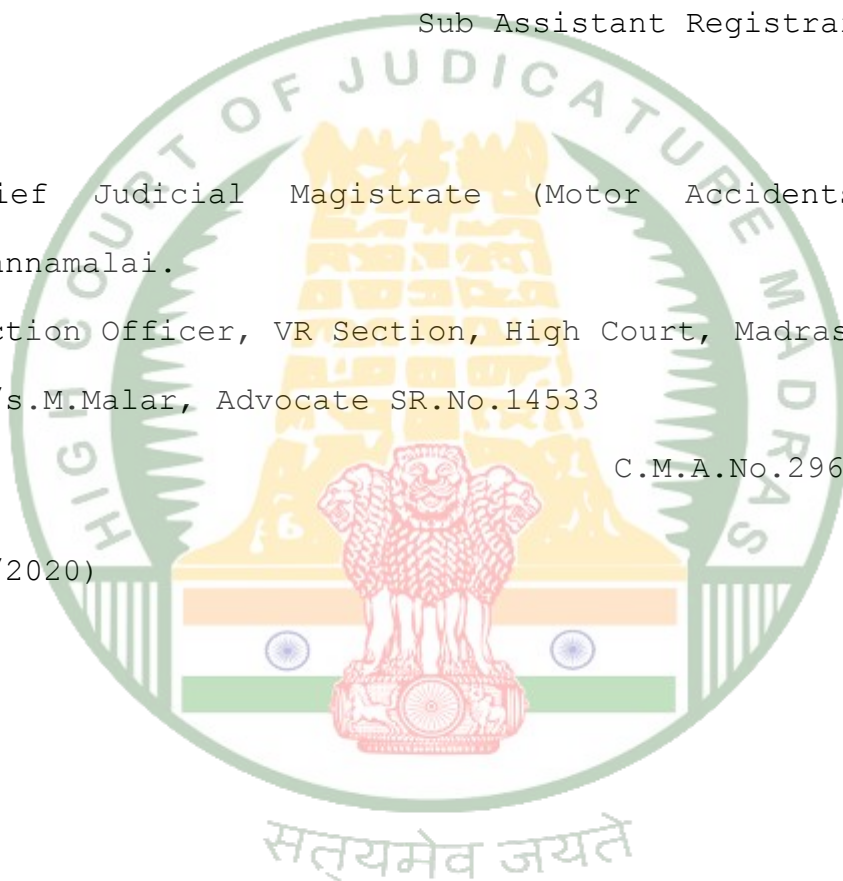
1. TheChief Judicial Magistrate (Motor Accidents Claims Tribunal),
Tiruvannamalai.

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

+1cc to M/s.M.Malar, Advocate SR.No.14533

C.M.A.No.2963 of 2011

VBA (CO)
GMY (24/08/2020)



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