

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3108 of 2012

(Through Video Conferencing)

R.Megala,
D/o.V.Rajendran

... Appellant/Petitioner

Vs.

1. K.P.N.Murthy

2. H.D.F.C Chubb General Insurance
Company Limited.,
Raheja Towers, VII Floor,
Chennai - 2.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Order and Decree dated 15.03.2012 made in M.C.O.P.No.1640 of 2007, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai and enhance the award amount.

For Appellant : Ms.R.Vasanthamala
for Mr.UM.Ravichandran

For R2 : Mr.B.Poomalai

JUDGMENT

The Claimant is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 15.03.2012 passed by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in M.C.O.P.No.1640 of 2007.

2. The appellant/claimant who met with an accident on 10.02.2006 at about 09.30 hours, near Sirungeri Sipcot Junction, Kelampakkam, kancheepuram, as a result of which, she suffered the following injuries:-

- (i) Fracture of 9th Rib right side
- (ii) Fracture of Right Clavicle
- (iii) Head Injury

(iv) Injury on right hand , right leg, stomach and other multiple injuries all over the body

3. Before the Tribunal, the nature of injuries were assessed as follows:-

"11. The Doctor P.W.2 has deposed that he examined the petitioner clinically and on the basis of Discharge Summary and assessed the disability of the petitioner and found it to be 35% permanent for Fracture of 9th rib right and fracture outer end right clavicle. P.W.2 deposed that the right 9th rib was united malunionly, due to the contraction and expansion of the above said chest is being restricted, she will be also having breathing problem, due to the fracture of 9th rib she could not bend herself and she will be having a pain over there constantly, due to the fracture of right clavicle she could not lift any articles more than 5 kg. And also she could not rotate and swing her right hand due to the deformity aroused out of the above said accident, apart from that restriction of movement is there to the extent of 30 degree due to the above said fracture. It is supported by Ex.P8 Disability Certificate. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured. Though X-ray was taken at present, the report for the same was not filed. Considering the nature of injury she sustained the assessment of disability by P.W.2 appears to be on the higher side and the disability is fixed at 30%.

Further on the side of the petitioner P.W.3 Dr.R.Rajappa was examined and assessed the disability at 70% as partial and permanent for Right Eye Coloboma with partial retinal detachment and Left Eye Inferior Coloboma with total RD. It is supported by Ex.P9 Disability Certificate. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured. Considering the nature of injury she sustained the assessment of disability by P.W.3 appears to be on the higher side and the disability is fixed at 60%. Hence considering the age and injuries sustained by the petitioner, at the rate of Rs.2,000/- per percentage, a sum of Rs.1,20,000/- is allowed under the head of partial permanent disability."

4. The Tribunal after considering the evidences on record has awarded total sum of Rs.3,15,000/-. In this appeal, the appellant/claimant seeks for enhancement of compensation.

5. I have heard the learned counsel for the appellant and the second respondent and perused the evidences on record and relevant case was cited by the learned counsel for the appellant.

6. In my view, the assessment of the permanent disability and permanent partial disability by the Tribunal appears to be a fair for awarding the compensation. However, while awarding the compensation, the Tribunal has awarded lesser amount of compensation and in my view, the appellant/claimant therefore deserves a just compensation considering the injuries suffered by her which resulted in injuries to her eye coloboma, clavicle/collarbone fractures.

This matter having been listed under the caption "for Being Mentioned" on this Monday, the Twenty third day of November 2020 at the request of Mr.R. Vasanthamala Advocate for Mr.U.M. Ravichandran, Advocate for the Appellant and of Mr.B.Poomalai, Advocate for the Second Respondent, the Court made the following order:

At the request of the learned counsel for the appellant, this Civil Miscellaneous Appeal was listed under the caption "for being mentioned".

2. The compensation was partially enhanced. However, in the table given for enhancing the compensation, a mistake crept in. In Sl.No.10, the Tribunal has awarded a sum of Rs.2,000/- per percentage towards permanent disability and thereby awarded a sum of Rs.1,20,000/-. During the course of hearing, it was indicated that the amount of compensation can be increased by another sum of Rs.60,000/-by calculating the compensation towards disability at the rate of Rs.3,000/- per percentage considering the date of accident on 10.02.2006. Since it is an error which crept in while calculating the above compensation, it is to be rectified.

3. Accordingly, Sl.No.10 of the table in para No.7 shall stand modified. In Column No.4 to Sl.No.10 the amount of Rs.1,20,000/- stands modified to Rs.1,80,000/-. The compensation awarded under the heads are therefore liable to be modified. Therefore, the compensation awarded by the Tribunal in the impugned Judgment and Decree is re-quantified as follows:-

Sl. No.	Heads of Compensation	Amount Awarded by the Tribunal	Amount awarded by this Court	Award Confirmed or enhanced or granted or reduced
1.	Transportation	Rs.5,000/-	Rs. 5,000/-	Confirmed
2.	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
3.	Medical Expenses	Rs.12,500/-	Rs.50,000/-	Enhanced
4.	Future Medical Expenses	Rs.5,000/-		
5.	Mental Agony	Rs.5,000/-	Rs.10,000/-	Enhanced
6.	Attender Charges	Rs.5,000/-	Rs. 5,000/-	Confirmed
7.	Loss of amenities of life	Rs.10,000/-	Rs. 15,000/-	Enhanced
8.	Marital Status	Rs.10,000/-	Rs.10,000/-	Confirmed
9.	Pain & Suffering	Rs.20,000/-	Rs.40,000/-	Enhanced
10.	Disability of 60%	Rs.1,20,000/-	* Rs.1,80,000/-	Enhanced
11.	Permanent Disability	Rs.67,500/-	Rs. 67,500/-	Confirmed
12.	Loss of Education	Rs.50,000/-	Rs. 50,000/-	Confirmed
	Total	Rs.3,15,000/-	* Rs.4,42,500/-	Enhanced by *Rs.1,27,500/-

* corrected

"8. The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.4,42,500/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by them, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit being made by the 2nd respondent/Insurance Company, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No cost. "

4. Registry is directed to carry out the necessary corrections and issue the fresh order copy to the parties.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

arb

To:

1. The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

2. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.U.M. Ravichandran, Advocate sr 37076.

+1 CC to Mr.B. Poomalai, Advocate sr 36254.

C.M.A.No.3108 of 2012

CNR(CO)
SP(16/12/2020)

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