

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2852 of 2013

Rukkumani

... Appellant/Petitioner

Vs.

1. M.Krishnamoorthy
(Exparte before the Tribunal)

2. The Divisional Manager,
National Insurance Co Ltd,
Divisional Office,
J.N.Street, Pondicherry -1.

... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.644 of 2007 dated 30.09.2010 on the file of the Motor Accident Claims Tribunal, I Additional Sub Judge, Cuddalore.

For Appellant : Mr.R.Sreedhar

For Respondents : R1 - Given up.
M/s.E.Rajadurai
for Mr.M.B.Raghavan.

J U D G M E N T

The appellant is the claimant filed this appeal for enhancement of compensation, as against the judgment and decree made in MACTOP.No.644 of 2007 dated 30.09.2010 on the file of the Motor Accident Claims Tribunal, I Additional Sub Judge, Cuddalore.

2. On 27.12.2006 at 6.45pm the claimant was standing near the Bus stop i.e, extreme eastern side of the four roads, Alapakkam in order to go to her native village. At that time, the first respondent motor cycle bearing Reg.No.TN31-H01458 came from North at great speed, without blowing horn in a rash and

negligent manner hit the claimant. Due to the accident, the claimant sustained fractures and grievous injuries. She is unable to use her right hand and depends upon others for her self-care activities.

3. The second respondent/insurance company denies the accident and involvement of the claimant. The first respondent has no driving license and hence, the insurer is not liable to pay the compensation.

4. In order to prove the case of the claimants, PW1 was examined and marked Ex.P1 to Ex.P5. RW1 was examined on the side of the second respondent and Ex.R1 to Ex.R3 were marked on the side of the second respondent.

5. Heard the rival submissions made on both sides and perused the materials available on record.

6. The learned counsel for the appellant submits that the claimant was earning a sum of Rs.3,000/-p.m. as a mason helper. From the accident register it is seen that the claimant sustained grievous injuries in the right wrist, head contusion and abrasion in the eyes. She was admitted as inpatient in the Government hospital, Cuddalore from 27.12.2006 and discharged on 05.01.2007.

7. The learned counsel for the second respondent/insurance company stated that the claimant failed to prove the source of income with valid documents. Though, Ex.P3 speaks that the claimant was admitted in the hospital from 27.12.2006 to 05.01.2007 and sustained one grievous injury. Whereas no Doctor has been summoned or issued any disability certificate to prove the percentage of disability. Therefore, the Tribunal has rightly considered the entire facts and negligence of the injured and awarded fair compensation which is on higher side.

8. From the available records, it is seen that the tribunal has considered the case of the claimant and awarded a sum of Rs.12,000/-. Upon considering the EX.P3/Accident register the claimant has sustained one grievous injury, the failure on the part of the claimant to bring the Doctor into the witness box cannot be a ground for rejecting the claim in toto. As the Tribunal has given a finding that the disability certificate has not been produced to assess the percentage of disability, the injuries sustained by her is recoverable and the claimant shall do her routine work in future after due medication, awarded a lumpsum of Rs.12,000/- to the claimant.

9. Considering the fact, the claimant was admitted in the hospital as inpatient from 27.12.2006 to 05.01.2007, it is also

mentioned in Ex.P3/accident register that the injured sustained one grievous injury and other simple injuries and no assessment has been made for the disability sustained by her. Hence, this Court is inclined to enhance the award amount of Rs.12,000/- to Rs.25,000/- with interest at 7.5%p.a. from the date of petition till the date of payment and with proportionate cost. The second respondent is directed to make the payment as there is a policy in existence to cover, within eight weeks from the date of receipt of copy of the Judgment and on such deposit of amount, the claimant is permitted to withdraw the entire amount by filing separate cheque application. The second respondent/ insurance company is at liberty to recover the same from the first respondent, if there is no valid license produced by the rider of the vehicle, in accordance with law by initiating appropriate proceedings.

10. In the result, the Civil Miscellaneous appeal is allowed. No costs.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

tsh

To

The Motor Accident Claims Tribunal,
I Additional Sub Judge, Cuddalore.

Copy To

The Section Officer,
VR Section, High Court,
Madrass-104.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.9623

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.8493

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PP(CO)
CS/15/10/2020

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