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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.477 of 2013

(Through Video Conferencing)

V.Kaliammal @ Kalinga ... Appellant/Petitioner

Vs.

1.Sankaraiya Naidu

2.M/s.United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002.

... Respondents/Respondents

(R1 - Exparte in the Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.2514 of 2006, on the file of Motor Accidents Claims Tribunal, Chennai, Additional District Judge, II Fast Track Court at Chennai, dated 11.04.2011.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the impugned Common Judgment and Decree dated 11.04.2011, passed by the Motor Accidents Claims Tribunal, Chennai, Additional District Judge, II Fast Track Court at Chennai, in M.C.O.P.No.2514 of 2006.

2. By the impugned Common Judgment and Decree, the Tribunal has awarded a sum of Rs.98,200/- as compensation together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit, to the appellant/claimant for the injury suffered by her.

3. The brief facts of the case are that on 23.05.2006 at 11.15 p.m the the deceased N.Vijayan was proceeding on the GST Road with his wife appellant Mrs.V.Kaliammal @ Kalinga on



their motor cycle bearing registration No.TN-22-D-4372, a lorry bearing registration No.TN.20-U-0733 insured with the 2nd respondent belonging to the 1st respondent driven in a rash and negligent manner came from the wrong side of the road and hit them and caused the fatal injury to the deceased N.Vijayan and to the appellant who was in the motor cycle as pillion, as a result of which, the said Vijayan died on the spot of accident. The appellant wife suffered injuries. Under these circumstances, two separate claim petitions were filed for the death of deceased Vijayan which was the subject matter of C.M.A.No.466 of 2013 and for the injury of the appellant which is the subject matter of this appeal.

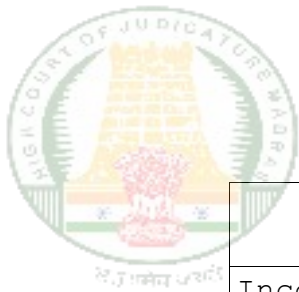
4. It is case of the appellant that the Tribunal erred in awarding meagre compensation of Rs.98,200/- towards loss of earning, towards pain and sufferings, towards cost of medicine and towards permanent disability as follows:-

Heads of calculation	Amount awarded by the Tribunal
Loss of earning	Rs. 7,500/-
Pain and Sufferings	Rs.25,000/-
Cost of purchase of medicine	Rs. 700/-
Permanent Disability	Rs.65,000/-
Total	Rs.98,200/-

5. I have considered the arguments advanced by the learned counsel for the appellant and the 2nd respondent. I have also perused the evidence on record and the impugned Judgment and Decree awarding the aforesaid compensation to the appellant/claimant.

6. There is no dispute in the nature of injury suffered by the appellant. According to the appellant/claimant, she was earning a sum of Rs.4,500/- per month by selling saries from house to house. However, no evidence was filed by the appellant. Therefore, the Tribunal has fixed a notional monthly income of the appellant as Rs.2,500/- in absence of direct evidence.

7. Considering the fact that there are no evidences to substantiate the monthly income of the appellant of Rs.4,500/-, I am inclined to uphold the notional income arrived by the Tribunal. However, the amount of compensation of Rs.98,200/- awarded by the Tribunal to the appellant/claimant appears to be disproportionate to the injury suffered by her and therefore the compensation awarded by the Tribunal is re-quantified as follows:-



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Heads and Calculation	Re-quantified by this Court
Income of the appellant : Rs.2,500/-	
(Loss of earning of the appellant is enhanced to 6 months) (2,500 x 6)	Rs. 15,000/-
Transport Expenses	Rs. 5,000/-
Extra nourishment	Rs. 7,500/-
Medical Expenses	Rs. 6,500/-
Damage of clothes	Rs. 1,000/-
Loss of amenities of life	Rs. 5,000/-
Pain and Sufferings	Rs. 30,000/-
Loss of earning capacity (2000 x 65)	Rs.1,30,000/-
Total	Rs.2,00,000/-

8. Since the compensation is being enhanced to the appellant, the 2nd respondent Insurance Company is directed to pay the interest on the enhanced compensation at 7.5% per annum, from the date of the claim petition till the date of deposit.

9. Therefore, the 2nd respondent Insurance Company is directed to deposit the enhanced compensation of Rs.1,01,800/- (2,00,000 - 98,200), together within interest at 7.5% per annum, from the date of filing of the claim petition till the date of such deposit, within the period of six weeks from the date of receipt of a copy of this Judgment.

10. If the amount of compensation awarded by the Tribunal has not deposited by the 2nd respondent Insurance Company, it is also directed to deposit the same together with interest at 9% per annum from the date of filing of the claim petition till the date of such deposit as was directed in the impugned Judgment and Decree passed by the Tribunal, less the amount already deposited if any, within the aforesaid time.

11. On such deposits, the appellant/claimant is entitled to withdraw the same together with interest, less the amount already withdrawn if any, by filing suitable application before the Tribunal.



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

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To:

The Additional District Judge,
II Fast Track Court at Chennai
Motor Accidents Claims Tribunal,
Chennai,

+1cc to Mr.T.G.Balachandran, Advocate SR.No.24934

C.M.A.No.477 of 2013

MG(CO)
GMY(17/08/2021)