

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2726 of 2016

and

C.M.P.no.19693 of 2016

M/s United India Insurance Co.Ltd.,
AKM, Tower, 1st Floor,
397-1, Junction Main Road,
Salem-4.

.. Appellant/2nd Respondent

/versus/

1.Gnanam

..1st Respondent/Claimant

2.Salem District Co.Op.Agri Service Society Ltd.,
S.S.61 L6, Industrial Estate,
5 Road, Salem-4.

..2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 03.08.2016 made in M.C.O.P.No.1185 of 2010 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge No.2) at Salem.

For Appellant :M/S.I.Malar

For Respondents :Mr.M.Sivakumar for R1
Mr.L.P.Shanmugasundaram for R2

J U D G M E N T

(The case has been heard through video conference)

Aggrieved by the award of the Tribunal, the present appeal has been filed by the Insurance Company.

2.It is the case of motor accident claim. While overtaking, the driver of the tractor bearing Reg.No.TNS 7922 rash and negligently hit the two wheeler (scooty-pep) of the claimant. Compensation of Rs.5 laksh sought for the disability caused due to the fracture sustained. The Tribunal has awarded Rs.4,39,770/- taking into consideration the disability certificate given by the Doctor that the fractured injury caused to the left leg of the claimant has caused 39.65% disability.

3.The appeal is filed by the insurer of the tractor on the ground that the Tribunal has failed to take note of the belated First Information Report registered after 45 days of the accident. The Tribunal erred in accepting the disability given by the Doctor, who has not treated her and further, it is contended that the compensation given under other heads are also excessive. The learned counsel would submit that the claimant had no driving license and the accident occurred due to her contributory negligence. Hence, the Tribunal ought to have deducted 50% of the award amount for the contribution of the claimant.

4.The learned counsel appearing for the 1st respondent/claimant would submit that the absence of driving license per se is not a fact to infer negligence unless and until negligence is proved through evidence. So far as the quantum of compensation awarded, the learned counsel appearing for the 1st respondent/claimant would submit that the injured was 45 years old woman making her earning as a document writer. The fractured left leg has impaired her earning capacity and therefore, the award of the Tribunal has to be confirmed.

5.On perusing the evidence placed before the Tribunal, this Court finds that the claimant after the accident was admitted in the hospital on 08.10.2009 and was treated as in-patient till 20.11.2009. PW-2 Doctor has assessed the partial permanent disability at 39.65%. The injury sustained by the claimant is fracture of left leg, which has caused restriction in the movement of the claimant to do her day to day work. The injury and subsequent surgery has caused disfigurement of her left leg. Hence, this Court finds that for the said injury the Tribunal had without any proper appreciation accepted the 39.65% disability assessed by the Doctor, which is not based on any working sheet. Therefore, this Court fixes the partial disability caused due to fracture of left leg at 20%. For loss of amenity, the Tribunal has awarded Rs.50,000/- and for pain and suffering the Tribunal has awarded Rs.50,000/-. Taking note of the period of inpatient treatment and the nature of injury, this Court confirms the Tribunal award under these two heads. For loss of pain and suffering. For loss of income during the treatment period, the tribunal has awarded Rs.36,000/- for 6 months at the rate of Rs.6,000/- per month. The claimant was in the hospital for 40 days and therefore, fixation of treatment period as 6 months is justifiable. Hence, the said award amount is not interfered. Taking note of the above facts and for getting involved in the accident without driving license, this Court is inclined to deduct 10% towards contributory negligence from the total compensation awarded by this Court.

6.Accordingly, this Court modifies the award of the Tribunal as below:-

Sl. No.	Particulars	Award passed by the Tribunal (Rs.)	Award modifies by this Court (Rs.)	Enhanced / Confirmed/ Reduced
1.	Loss of disability	1,18,950-00 (3000x39.65 %)	60,000-00 (3000x20%)	Reduced
2.	Loss of pain and suffering	50,000-00	50,000-00	confirmed
3.	Loss of amenities	50,000-00	50,000-00	confirmed
4.	Medical expenses	1,43,820-00	1,43,820-00	confirmed
5.	Loss of income during the treatment period	36,000-00	36,000-00	confirmed
6.	Transport charges	5,000-00	5,000-00	confirmed
7.	Extra nourishment	20,000-00	20,000-00	confirmed
8.	Attender charges	15,000-00	15,000-00	confirmed
9.	Damage to cloth	1,000-00	1,000-00	confirmed
	Total	4,39,770-00	3,80,820-00	Reduced
10.	Less 10% for contributory negligence		(-) 38,082-00	
	Total	4,39,770-00	3,42,738-00	Reduced

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the modified award amount of Rs.3,42,738-00 with interest at the rate of 7.5% p.a, from the date of petition till the date of realisation shall be deposited by the Insurance company, less the amount already deposited, if any, as per order of this Court dated 09.12.2016, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the modified award amount on filing appropriate application before the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Motor Accident Claims Tribunal, Special Subordinate Judge-II, Salem.
- 2.The Section Officer, VR Section, Madras High Court.

+1cc to Mr.T.Ravichandran, Advocate SR.No. 32323

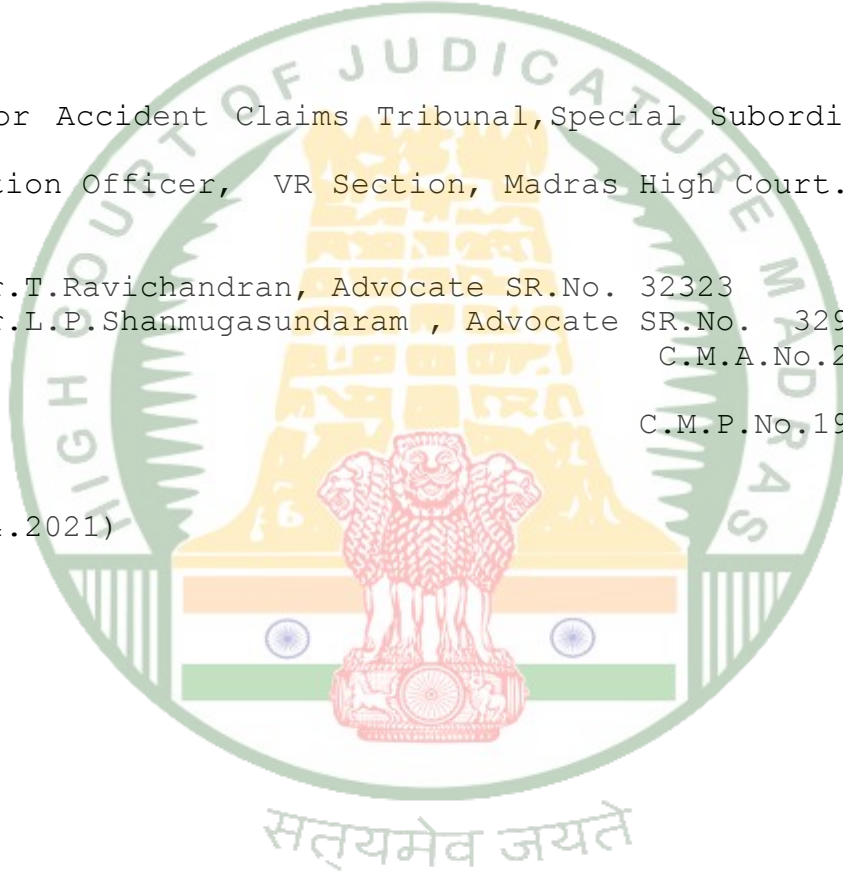
+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 32904

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A.SK(19.04.2021)



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