

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.NO.567 of 2016

Rajeswari

..Appellant/ Claimant

/versus/

1.Sathikshkumar

(Notice to R1 may be dispensed with
for the set ex-parte before the Tribunal)

2.Universal Sompo General Insurance Co.Ltd,
No.6,G-1, Cathedral Garden Road,

Nungambakkam, Chennai 600 034. .. Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.267 of 2014 dated 04.12.2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode.

For Appellant :Mr.C.Paraneedharan

For R2 :M/s R.Vijaya Kamala

For R1 :Exparte before Tribunal

JUDGEMENT

This appeal is filed against the judgment and decree made in M.C.O.P.No.267 of 2014 dated 04.12.2015 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruchengode.

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent.

3.The appellant herein is the victim of road accident, which occurred on 18.03.2014. While the appellant was walking along with Tiruchengode to Namakkal main road near Elayampalayam Vivekanandha College from east to west direction, a motor cycle bearing Reg.No.TN 28 Y 0671 Splendor plus hit her causing fracture injury on her leg. A claim petition was filed seeking compensation of Rs.15 lakhs. The Tribunal, after considering the material evidence placed by the claimant and the defence taken by the 2nd respondent has awarded Rs.1,19,923/- under the following heads:

Loss of earning	Rs.15,000-00
Transport to hospital	Rs. 2,000-00
Extra nourishment	Rs. 3,000-00
Medical expenses	Rs.54,923-00
Compensation for pain and suffering	Rs. 5,000-00
Permanent disability	Rs.40,000-00
Total	Rs.1,19,923-00

4. Aggrieved by the award which is according to the appellant is less than what she deserves, the present appeal is filed.

5. The learned counsel appearing for the appellant would submit that the petitioner at the time of accident was earning a monthly salary of Rs.30,000/- as a Supervisor. Whereas, the Tribunal has awarded only Rs.15,000/- for loss of earning, taking notional salary of Rs.5,000/- per month. Further, the learned counsel would submit that the Doctor has assessed the permanent disability as 43%. Whereas, the Tribunal has fixed the permanent disability as 20% which is far less than what the disability he suffered.

6. The learned counsel for the 2nd respondent would state that the Tribunal has rightly fixed the monthly salary as Rs.5,000/- since the appellant has not produced any document to substantiate her income. As far as the injury is concerned, the appellant has sustained two fractures in her right fibula and right leg with ankle medial malleolus and lateral malleolus and right ankle joint for which the Tribunal has rightly assessed the permanent disability as 20%,

7. On considering the rival submissions, this Court finds that the appellant though claims her earning as Rs.30,000/- p.m., as a Supervisor, there is no piece of evidence to substantiate the said claim. She was 35 years old at the time of accident and there is no piece of evidence to prove her employment. In the said circumstances, the fixation of salary notionally at Rs.5,000/- per month in the year 2014 is just and proper. Regarding the compensation for pain and suffering the Tribunal has awarded Rs.5,000/-. From the medical records, this Court finds that the appellant was taking treatment for nearly 8 days as inpatient and surgery was conducted for the fracture. Therefore, this Court finds that she is entitled for another Rs.5,000/- in addition under the head of pain and suffering. This Court finds that the Tribunal has not considered the loss of amenity. The fracture in her right fibula and right leg with ankle medial malleolus and lateral malleolus and right ankle joint, necessarily will

cause loss of amenity. Therefore, the appellant is entitled for Rs.20,000/- under the head of loss of amenity. The other heads namely, loss of earning, transport to hospital, extra nourishment, medical expenses and permanent disability remain unaltered.

8.The break up details of the award fixed by this Court is below:

Loss of earning	Rs.15,000-00
Transport to hospital	Rs. 2,000-00
Extra nourishment	Rs. 3,000-00
Medical expenses	Rs.54,923-00
Compensation for pain and suffering	Rs.10,000-00
Permanent disability	Rs.40,000-00
Loss of amenity	Rs.20,000-00
Total	Rs.1,44,923-00

9.In the result, this Civil Miscellaneous Appeal is partly allowed. The 2nd respondent-insurance company is directed to pay the award amount of Rs.1,44,923/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation to the claimant/appellant, after deducting the amount already deposited. The appellant/claimant is permitted to withdraw the award amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
Subordinate Court, Tiruchengode.

C.M.A.NO.567 of 2016

VSN II (CO)
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