



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.08.2020

Pronounced on: 21.08.2020

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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN  
C.M.A.No.768 of 2016

S.Vijayalakshmi

...Appellant/Petitioner

/versus/

1.S.S.Basheer Ahamed  
(exparte in the trial Court)

2.Bajaj Allianz General Insurance Co.Ltd.,  
Old No.276 & 277, New No.497 & 498  
"Isana Kattima Buildings", 5<sup>th</sup> Floor,  
Poonamallee High Road,  
Opp: to Tamil Nadu Pollution Control Board,  
Arumbakkam,  
Chennai-600 106.

...Respondents/ Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 12.01.2016 made in M.A.C.T.O.P.No.6171 of 2012 on the file of the III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

|               |                       |
|---------------|-----------------------|
| For Appellant | : Mr.K.Suryanarayanan |
|               | For Mr.M.Swamikannu   |
| For R1        | : No appearance       |
| For R2        | : M/s.R.Sree Vidhya   |

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the claimant seeking enhancement of compensation.

2. The claimant while proceeding from South to North in Mahalingapuram service road in her TVS Scooty Pep bearing registration No.TN 09 AS 7121 the car bearing registration No.TN 01 AK 7483 came from behind and dashed the TVS Scooty. In the impact the claimant fell down and sustained multiple compound and comminuted fractures. She was treated till 25/10/2012 as in-patient and advised to come for follow up treatment.

3. At the time of the accident she was 34 years old working as Accountant in a private firm earning Rs.13,000/-p.m. She lost her income during the period of treatment and also lost



her earning capacity. She incurred medical expenses over a lakh and fifty thousand rupees, hence compensation for Rs.9,75,000/- sought against the car owner and its insurer.

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4. The Insurance Company filed counter denying the liability and the alleged accident. It was specifically contended that the claimant had no valid driving license and insurance policy. The accident occurred due to the rash and negligent act of the claimant who drove her TVS Scooty. She sustained only bruises and was treated for the injuries which are minor in nature.

5. Before the Motor Accidents Claims Tribunal, Chennai the claimant and doctor were examined as PW-1 and PW-2. 6 documents were marked on the side of the claimants. The Court Tribunal on weighing the evidence awarded Rs.1,69,120/- with 7.5% interest payable from the date of numbering the claim petition ( 12/12/2012) till the date of deposit. The insurance company was directed to pay the compensation.

6. The learned counsel for the claimant submitted that the injured victim was working in a private firm as an accountant. The Tribunal as against the claim of Rs.65,000/- for loss of income awarded only Rs.13,800/- The award towards transport to hospital, extra nourishment, future medical expenses, pain and suffering are not adequate.

7. The learned counsel appearing for the respondent Insurance Company, would submit that, the award fixed is adequate and fair commensurating the injuries sustained by the claimant.

8. The Tribunal awarded a total sum of Rs.1,69,120/- to the claimant under the following heads. The Tribunal has given cogent reasoning for fixation of award.

|                                     |              |
|-------------------------------------|--------------|
| Loss of income ( Rs 210 x 36 days ) | Rs. 13,860/- |
| Attender charges ( Rs 210 x 6 days) | Rs. 1,260/-  |
| Transport to hospital               | Rs. 2,000/-  |
| Extra nourishment                   | Rs. 10,000/- |
| Damage to clothings                 | Rs. 1,000/-  |
| Disability at 15% ( Rs 3000 x 15)   | Rs. 45,000/- |
| Future medical expenses             | Rs. 50,000/- |



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|                                       |               |
|---------------------------------------|---------------|
| Physiotherapy charges                 | Rs. 10,000/-  |
| Pain and sufferings                   | Rs. 25,000/-  |
| Damages for mental and physical shock | Rs. 10,000/-  |
| Total                                 | Rs.1,69,120/- |

9. The accident of the year 2012. The Tribunal has recorded that the claimant has got all her medical claim reimbursed under the medical insurance. For future treatment, based on the estimation given by Vasanthi Orthopaetric Hospital Rs.50,000/- has been awarded for future medical expenses. For the 15% assessed disability, Rs.3000/- per % awarded. The 6 days in-patient and one month for convalescence the Tribunal has awarded Rs.13,860/- taking Rs.6,500/- as monthly income as foundation. The doctor has opined the disability found in the claimant is 25%. The Tribunal on considering the medical report has fixed 15% disability for the fracture left Humerus.

10. The appreciation of the evidence on record does not warrant much interference in the tribunal award. The tribunal has fixed the monthly income notionally at Rs 6500/- disbelieving the salary certificate since the person who issued the salary certificate not examined. In view of this court, it shall be fixed at Rs 8000/-. The loss of income for the treatment period shall be for two months instead of 36 days. Like wise, the attender charges shall be for 15 days instead of 6 days. Except these modification as enhancement , award under the rest of the heads shall stand confirmed.

11. In the result, the tribunal award is modified as below:-

|                                       |              |
|---------------------------------------|--------------|
| Loss of income ( Rs 8000 x 2 )        | Rs.16,000/-  |
| Attender charges ( Rs 210 x 15 days)  | Rs. 3,150/-  |
| Damages for mental and physical shock | Rs. 10,000/- |
| Transport to hospital                 | Rs. 2,000/-  |
| Extra nourishment                     | Rs. 10,000/- |
| Damage to clothings                   | Rs. 1,000/-  |
| Disability at 15% ( Rs 3000 x 15)     | Rs 45,000/-  |
| Future medical expenses               | Rs.50,000/-  |
| Physiotherapy charges                 | Rs.10,000/-  |
| Pain and sufferings                   | Rs.25,000/-  |



|                   |              |
|-------------------|--------------|
| Loss of amenities | Rs.10,000/-  |
| Total             | Rs.182,150/- |

12. The first respondent Insurance Company is directed to deposit the above award amount of Rs.1,82,150 with interest at the rate of 7.5% from 12/12/2012 till the date of deposit. On such deposit the claimant shall withdraw the same on filing appropriate petition.

13. In the result, the Civil Miscellaneous Appeal is partly allowed. With costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl  
To

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

Copy to:

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

+1cc to Mr.M.Swamikannu, Advocate SR.No. 27424

C.M.A.No.768 of 2016

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A.SK(09.09.2021)