

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3740 of 2019

R.Gandhimathi

.. Appellant

vs.

1.Ramasamy

2.Divisional Manager,
M/s.National Insurance Company
Limited,
No.74A, Paramathi Road,
Namakkal.

.. Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.06.2018 passed in M.C.O.P.No.1465 of 2016 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondents: R1 - No appearance

R2 - Mr.S.Vadivel

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 18.06.2018 made in M.C.O.P.No.1465 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

2. The claimant is the appellant, filed the appeal, seeking enhancement of compensation.

3. The learned counsel appearing on behalf of the appellant/claimant mainly contended that the appellant was 45 years of age at the time of accident and she was working as a Coolie. The accident occurred in the year 2016 and the monthly salary fixed by the Tribunal is a sum of Rs.3,000/- which is certainly inadequate and improper. Even the said amount of Rs.3,000/- would not satisfy the principles laid down under the Minimum Wages Act. Therefore, the monthly income fixed by the

Tribunal is to be enhanced. This apart, the Disability was assessed at 40% and a sum of Rs.3,000/- is granted for one percentage of disability. The Tribunal also committed an error in fixing a sum of Rs.3,000/- as is not in commensuration with the cost index of the year of the accident. Further, the other heads also require enhancement.

4. The learned counsel appearing on behalf of the 2nd respondent/Insurance company disputed the contentions by stating that the appellant/claimant has not produced any proof regarding her income as Coolie. In the absence of any document to establish the avocation, the Tribunal would be right in fixing a sum of Rs.3,000/- as salary per month. This apart, the injuries sustained are not so grave, warranting further enhancement under the disability compensation. The Tribunal has granted a reasonable compensation, which require no modification and accordingly, the appeal is liable to be dismissed.

5. The accident on 02.10.2016 at about 5.45 a.m. at Vallipuram to Pullakumarapalayam Main Road near 4 Road. Nallipalayam Police Station registered a case in Crime No.306/16 under Sections 279 & 338 of IPC. Due to the accident, the appellant/claimant sustained grievous injuries all over the body including a Fracture in Left Leg. She was admitted in Maruthi Hospital, Namakkal and thereafter, shifted to Ganga Hospital, Coimbatore for treatment for Fracture. She was admitted as inpatient for about 10 days and spent a sum of Rs.2,00,000/- towards Medical Expenses. The Claim Petition was filed and the Tribunal adjudicated the issues with reference to the documents as well as the evidences. The Tribunal arrived a conclusion that the driver of the HeroHonda Motor Cycle bearing Registration No.TN-28-AK-0441 is responsible for the cause of accident and therefore, the 2nd respondent/Insurance company is liable to pay the compensation to the appellant/claimant. As far as the quantum of compensation is concerned, the tribunal fixed a sum of Rs.3,000/- as monthly income and awarded Rs.6,000/- towards loss of income. Further, a sum of Rs.3,000/- is granted for one percentage of disability and a total compensation of Rs.1,20,000/- was awarded towards Disability.

6. Admittedly, there is no proof to establish that the appellant/claimant was working as a Coolie. Even in such circumstances, where the income is unable to be proved by filing documents, the Court has to take into consideration various other factors for the purpose of quantifying the compensation. The factum regarding the accident was established. The Policy Coverage was also established. The negligence was fixed on the driver of the Motor Cycle, who dashed with the appellant and the appellant sustained injuries. When these facts are established beyond any pale of doubt, then the Tribunal has to consider the

quantum of compensation to be granted. While granting of compensation, a practical and pragmatic approach is certainly warranted. It is not as if, the compensation is to be granted, based on certain presumptions. The compensation is to be granted, based on certain principles, which must be logical and in commensuration with the gravity of the injuries sustained as well as the current situation prevailing in that particular locality including the cost index of the year of accident.

7. Even in such cases, where the victim is unable to establish her avocation, the fact remains that she was travelling along with her husband. Thus, she has a family and children. In such circumstances, Courts are bound to treat such victim as Homemakers and the said victim cannot be denied by any Insurance company. If a victim is unable to establish her occupation and has stated that she was a Coolie, then the Courts can treat her as a Home maker for all purposes and consider a grant of compensation. The job of the Home makers cannot be undermined on any circumstances. It is a prevailing practice that whenever a Claim Petition is filed, it is advised by the legal brains that some occupation is to be mentioned. It is a poor state of affairs, where the truth regarding the occupation is not stated by the claimants on most occasions. This Court has not seen any such Claim Petition, stating that the victim is a Home Maker as if there is no Home Maker is performing their duties in our great Nation. Such a practice of providing a false information in the Claim Petitions is to be avoided. If a victim is maintaining the family, then it is to be stated in the Claim Petition that he or she is a Home Maker. Courts are bound to assess the monthly income of the Home Makers also. This Court also issued certain guidelines for the purpose of fixing the monthly salary to the Home Makers. The monthly income for the Home Makers are to be fixed more than the income of the Coolie or other persons, in view of the fact that the Home Makers are working for a longer time than that of the other employees. Such factors are also to be considered by the Courts. In the absence of Home Makers, the family will also suffer as a whole. These factors are to be borne in mind, while quantifying the compensation in the cases, where the victim has stated that they are Home Makers.

8. As far as the present appeal is concerned, the appellant/claimant sustained grievous injuries including fracture. He was admitted as inpatient for 10 days and had taken treatment in Ganga Hospital, Coimbatore, which is one of the reputed Medical Institution. The learned counsel for the appellant/claimant also reiterated that she had spent more than Rs.2,00,000/- for such treatment. After discharge also, she was treated as outpatient for about one year. Considering the long treatment and the quantum of amount spent towards the medical

expenses, this Court is of an opinion that the total compensation granted by the Tribunal is on the lesser side and accordingly, this Court is inclined to enhance the compensation as detailed hereunder:

1.	Loss of Income		
	(6x10,000/-=60,000) :		60,000/-
2.	Transport Expenses	:	25,000/-
3.	Extra Nourishment	:	15,000/-
4.	Medical Bills	:	1,25,100/-
5.	For Disability		
	(40%x5,000/-=2,00,000/-) :		2,00,000/-
6.	Pain and Suffering	:	50,000/-

	TOTAL	:	4,75,100/-

9. Thus, the appellant/claimant is entitled for a total compensation of a sum of Rs.4,75,100/- (Rupees Four Lakh Seventy Five Thousand and One Hundred only) along with the interest at the rate of 7.5% per annum.

10. Accordingly, the 2nd respondent/Insurance company is directed to deposit the enhanced compensation amount along with accrued interest within a period of twelve(12) weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the entire amount along with the interest by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the additional Court fee, if any, with reference to the enhanced compensation within a period of two(2) weeks from the date of receipt of a copy of this judgment and the payments are to be made through RTGS.

11. Accordingly, the judgment and the decree dated 18.06.2018 passed in M.C.O.P.No.1465 of 2016 stands modified and consequently, the Civil Miscellaneous Appeal in C.M.A.No.3740 of 2019 stands allowed in part. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Namakkal.

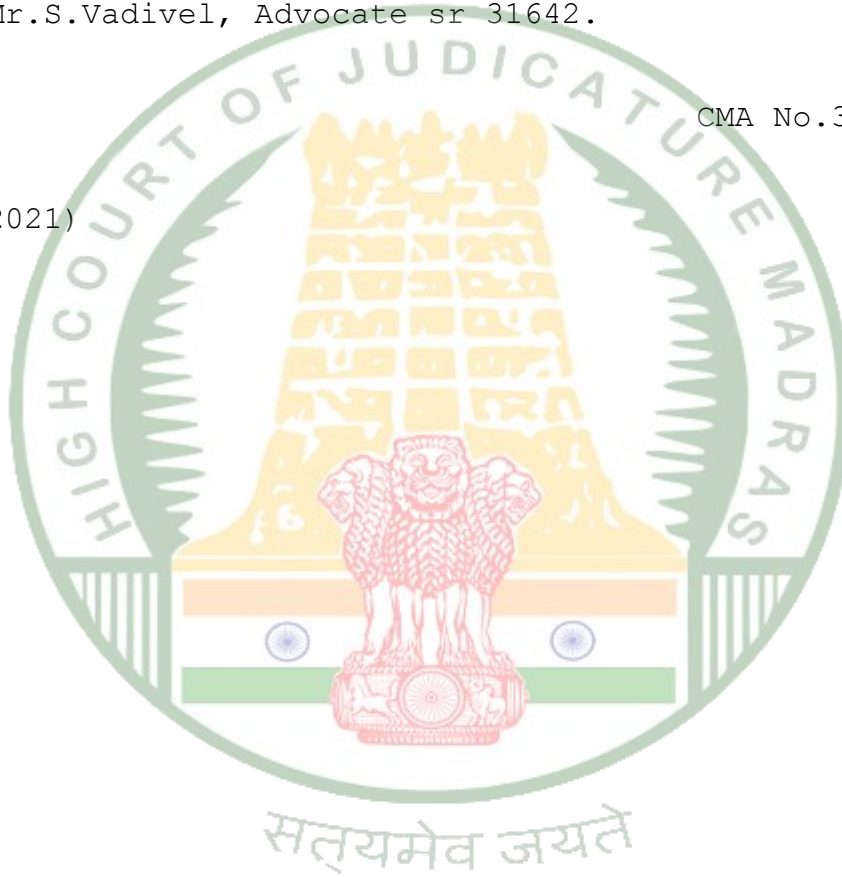
Copy to
The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.C.Thangaraju, Advocate sr 31471.

+1 CC to Mr.S.Vadivel, Advocate sr 31642.

CMA No.3740 of 2019

SV(CO)
SP(07/01/2021)



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