

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3764 of 2019

Agilandam

..Appellant/Petitioner

vs.

1.Rajagopalan

2.Manager

New India Assurance Company Limited
No.133/31-1, II Floor
Trichy Main Road,
Near Raja Sabari Theatre,
Gugai, Salem District.

..Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2019 passed in MCOP.No.458 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju
For Respondents : No Appearance for R1
Mr.M.Krishnamoorthy for R2

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 06.02.2019 passed in M.C.O.P.No.458 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

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

3. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is inadequate and not in commensuration with the gravity of the injuries suffered by the claimant. It is contended that the claimant suffered grievous injuries and the doctor assessed the disability at 25%. The claimant was a

coolie and aged about 57 years and she was not in a position to perform her work, after the accident. Therefore, there is a loss of income permanently and the compensation granted by the Tribunal is to be enhanced.

4. The accident occurred on 28.05.2016 at about 5.30 p.m at Kollimalai Road, Reddy Colony near KP Samy Audio Sound System. The Senthamangalam police station registered a case in Crime No.128 of 2016 under Sections 279, 338 IPC. Due to the accident, the claimant sustained grievous injuries. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the driver of the two-wheeler bearing Registration No.TN 54 L 1941 had driven the vehicle in a rash and negligent manner and caused the accident and the negligence was fixed on the driver of the two wheeler, who is the first respondent in this appeal.

5. With regard to the quantum of compensation, the Tribunal has awarded a total compensation of Rs.2,07,830/-. In this regard, it is contended that the loss of income was granted only for two months which is improper in view of the fact that the claimant was taking treatment continuously for more than four months. This apart, she sustained grievous injuries and the disability caused permanent loss of income. Further, the disability compensation was granted by fixing a sum of Rs.3,000/- for one percentage and the same is to be enhanced.

6. The learned counsel appearing on behalf of the second respondent/Insurance Company refuted the contention raised by the appellant by stating that the appellant/claimant has suffered minor injuries and she had not taken treatment continuously in view of the fact that the injuries are not so grave. Therefore, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

7. This Court is of the considered opinion that the appellant/claimant was aged about 57 years at the time of the accident. The doctor assessed the disability at 25%. Due to the accident, she was unable to perform her routine duties in a normal manner. She had taken treatment at M.M Hospital, Namakkal. The appellant/claimant being a coolie, undoubtedly the injuries would have caused the disability, loss of income and she would be incapacitated to some extent from performing her normal duties. This being the factum, this Court is of the considered opinion that the loss of income is to be at least calculated for a period of six months. This apart, the accident occurred in the year 2016. Thus, fixing a sum of Rs.3,000/- for

1% disability is inadequate. Therefore, this Court is inclined to enhance the disability compensation by fixing a sum of Rs.5000/- for 1%. Accordingly, the compensation awarded by the Tribunal stands modified as detailed hereunder:

1) Loss of Income (4000 x 6)	: Rs. 24,000/-
2) Transport Charges	: Rs. 5,000/-
3) For Nourishment	: Rs. 10,000/-
4) Medical claim	: Rs. 79,830/-
5) For disability (25% x 5000)	: Rs.1,25,000/-
6) For pain and suffering	: Rs. 30,000/-

Total: Rs.2,73,830/-

8. Thus, the appellant/claimant is entitled for a total compensation of Rs.2,73,830/- along with interest at 7.5% per annum. The second respondent Insurance Company is directed to deposit the enhanced compensation along with accrued interest within a period of 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 by filing an appropriate application and the payments are to be made through RTGS. The appellant is directed to pay the additional court fee, if any within a period of two weeks from the date of receipt of a copy of this judgment. The order of pay and recovery granted by the Motor Accident Claims Tribunal stands confirmed.

9. Accordingly, the Judgment and Decree dated 06.02.2019 passed in M.C.O.P.No.458 of 2016 stands modified and the Civil Miscellaneous Appeal stands allowed in part. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

C.M.A.No.3764 of 2019

KJ (CO)
SP(19/01/2021)