



In the High Court of Judicature at Madras

Dated: 03.02.2021

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The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A.No.1085 of 2011

and

M.P.No.1 of 2011

The Divisional Manager,
National Insurance Company Ltd.,
J.N. Street,
Pondichery.

... Appellant / 2nd Respondent

..Vs..

1.S.Vijayalakshmi

.. 1st Respondent / Petitioner

2.V.Chandrasekaran

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned I Additional Sub Judge, (MACT), Cuddalore in M.A.C.T.O.P.No.1957 of 2007 dated 16.07.2010.

For Appellant : Mrs.N.B.Surekha

For Respondents : No Appearance

JUDGMENT

Being aggrieved by the award passed by the Motor Accident Claims Tribunal / learned I Additional Sub Judge, (MACT), Cuddalore in M.A.C.T.O.P.No.1957 of 2007 dated 16.07.2010, the Insurance Company has preferred the present appeal.

2. Heard Mrs.B.Surekha, learned counsel appearing on behalf of the Insurance Company. Notice has been served on the respondents. None appears for the respondents on the last hearing and hence the Registry was directed to print the name of



the respondents in the cause list today. In spite of the same, even today there is no representation on behalf of the respondents. Hence the matter is taken up today for final disposal.

3. The brief facts of the case are as follows:-

a) On 14.07.2007 at about 2.00 p.m., when the claimant was proceeding towards her home near Thambipettai colony, a Tractor bearing registration No.TN-31-E-7011 belonging to the second respondent herein insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, hit against the claimant causing grievous injuries. She was admitted in the Government Hospital and treated as in-patient from 14.07.2007 to 16.07.2007 and thereafter taken treatment at different hospitals for the injuries sustained in the accident. Hence the claimant had filed a claim petition claiming a sum of Rs.5 lakhs as compensation for the injuries sustained by her.

b) Before the Tribunal, P.W.1 and P.W.2 were examined and exhibits 1 to 10 were marked on the side of the claimants. Neither any witness nor any document was marked on the side of the Insurance Company. After analyzing the oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tractor and directed the respondents therein to jointly or severally pay a sum of Rs.1,65,000/- as compensation to the claimant with interest at the rate of 7.5% p.a.

c) The break-up details of the award passed by the Tribunal is as follows:-

S.No.	Heads	Amount (Rs.)
1	Permanent disability	80,000
2	Pain & sufferings	30,000
3	Loss of income for 5 months during the treatment period	5,000
4	Medical expenses	15,000
5	Transportation	15,000
6	Extra nourishment	20,000
	Total	1,65,000



4. Aggrieved over the same, the appellant/Insurance Company has preferred the present appeal.

5. The learned counsel for the appellant/Insurance Company submitted that the amount awarded for the disability to the tune of Rs.80,000/- is unsustainable. She submitted that the Tribunal had erred in awarding a sum of Rs.5000/- for loss of income for 5 months during the treatment period as there is no material placed before the Tribunal to substantiate that she was working as an agricultural coolie at the time of accident and also contended that the claimant is a 11th standard student and hence she is not entitled for the amount awarded under the said head. Insofar as the other heads are concerned, the amount awarded by the Tribunal was any basis and the same seems to be higher and therefore requested for modification under these heads.

6. Firstly, insofar as the permanent disability is concerned, as per Ex.P9/disability certificate which reveals that the claimant had suffered grievous injuries in the accident and had sustained 40% disability. In support of the same, P.W.2/ Dr.Vijayakumar, an Orthopaedist was examined and he deposed that the respondent claimant sustained 40% disability and taking into consideration of the evidence of P.W.2, the Tribunal has rightly fixed Rs.2000/- per percentage and arrived at Rs.80000/- under the said head. Since there are no other material placed by the Insurance Company to disprove the evidence of P.W.2, this Court accepts the findings of the Tribunal and warrants no interference under the said head of permanent disability. Secondly, the Tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings which seems to be reasonable considering the nature of injuries sustained by the claimant in the accident and hence, the said amount does not require interference. In respect of other heads, for loss of income during the treatment period for 5 months, the Tribunal has awarded a sum of Rs.5000/-. Admittedly, the claimant was a student at the time of accident and no evidence has been placed before the Tribunal to show that the claimant was working as a coolie during the relevant point of time. Hence the contention of the learned counsel for the appellant in this regard has some force and therefore, the said contention is accepted and this Court holds that the finding of the Tribunal under the said head is unsustainable and hence, the claimant is not entitled for the amount granted by the Tribunal



under loss of income during the treatment period. Medical expenses the respondent claimant under Ex.P7 The Tribunal without considering the amount incurred by the claimant towards medical expenses, awarded Rs.15000/- towards medical expenses which is unsustainable and therefore as per Ex.P7/medical bills, this Court awards a sum of Rs.5000/- to the claimant towards medical expenses. The Tribunal has awarded Rs.15,000/- towards transportation which seems to be on the higher side and the same is modified to Rs.5000/-. Except the aforesaid modifications, the amount awarded by the Tribunal on the other heads remains unaltered.

7. The break-up details of the modified compensation amount by this Court is as follows:-

S.No.	Heads	Award amount of Tribunal (Rs.)	Amount granted by this Court (Rs.)	Enhanced/ Reduced/ Granted
1	Permanent disability	80,000	80,000	-
2	Pain and sufferings	30,000	30,000	-
3	Medical expenses	15,000	5,000	10,000
4	Transportation	15,000	5,000	10,000
5	Extra nourishment	20,000	20,000	-
6	Loss of amenities	-	5,000	5000
7	Attendant benefits	-	5,000	5000
8	Loss of income for 5 months during treatment period	5,000	-	5000
	Total	1,65,000	1,50,000	

8. In view of the aforesaid modification, the award amount passed by the Tribunal is reduced and consequently, the



Civil Miscellaneous Appeal is allowed in part. The learned counsel for the appellant/Insurance Company submitted that entire amount has been deposited by the Insurance Company. Due to the modification of the said award amount of the Tribunal, the Insurance Company is entitled to withdraw the balance amount after settling the amount to the claimant as per the compensation awarded by this Court.

9. In fine, the Civil Miscellaneous Appeal is allowed in part. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1.The I Additional Sub Court,
(The Motor Accident Claims Tribunal),
Cuddalore.

2.The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.5626

C.M.A.No.1085 of 2011

and

M.P.No.1 of 2011

SSD(CO)
SB(29/10/2021)