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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.141 of 2016
and
C.M.P.No.20779 of 2016

1.Govindammal (Died)
represented by her husband Rajendiran
2. Rajendiran
3.R.Gangadharan
4.R.Nithiyalakshmi
5.R.Jaganath

[Appellants 2 to 5 brought on record as
L.Rs of the deceased sole appellant viz.,
Govindammal vide order of Court dated.12.02.2021
made in C.M.P.No.10, 5&6/21 in C.M.A.No.141/2016(TKRJ)]
...Appellant

Vs.

1.Rajkumar
(R1 remained exparte before the Tribunal)

2.The New India Assurance Company,
Rep.by its Divisional Manager,
No.1, Officer's Lane,
Vellore.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.08.2015, in M.C.O.P.No.181 of 2011, on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Ranipet, Vellore District.

For Appellant : Mr.E.Kannadasan

For R1 : Exparte before the Tribunal-NA

For R2 : Mr.Krishnamoorthy



JUDGMENT

The appellant is the claimant in M.C.O.P.No. 181 of 2011, on the file of the Motor Accidents Claims Tribunal, the Subordinate Judge, Ranipet, Vellore District. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a motor vehicle accident that took place on 27.06.2009.

2. The brief case of the appellant/claimant is as follows:-

(i) The appellant/claimant was aged 44 years on the date of the accident. She was working in Agricultural and Sithal to Mason and earning a sum of Rs.7,000/- per month.

(ii) On 27.06.2009, at about 9.00 A.M., the appellant/claimant was travelling in a Hero Honda motorcycle ridden by one Natarajan on Cheyyar to Arcot Road at Pudupadi Junction. At that time, a van bearing Registration No.TN 03 C 1333 owned by the 1st respondent and driven by one Thirunavukkarasu @ Nandakumar, came in a rash and negligent manner and dashed against the two wheeler ridden by the said Natarajan. Due to the said accident, the appellant/claimant sustained multiple injuries all over the body.

(iii) Immediately after the accident, the appellant/claimant was taken to nearby Hospital and then shifted to the C.M.C Hospital, Vellore. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The owner of the van, bearing Registration No.TN 03 C 1333, was absent before the Tribunal, and therefore, he was set ex-parte. The New India Assurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 to PW3 were examined and Ex.P1 to Ex.P8 were marked. On the side of the respondents, Assistant Manager of the 2nd respondent Insurance Company was examined as RW1 and Investigation Report is marked as Exhibit R1.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.3,63,000/- as compensation together with interest at the rate of 7.5% per annum and directed the first and second respondents to jointly and severally pay the said compensation to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



5. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence driving fixed on the part of the rider of the said motorcycle, is not in dispute and the same is hereby confirmed.

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6. The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant has suffered multiple injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital and C.M.C, Vellore. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

7. The learned counsel appearing for the second respondent/New India Assurance Company Limited would contend that as per the investigation report of the investigator, the claimant Govindammal suddenly crossed the road without noticing the oncoming van and the claimant himself dashed against the motorcycle. Hence, the second respondent/Assurance Company states that the fault lies on the part of the claimant and there is no fault on the part of the driver who drove the motor-cylce. The accused Hero Honda motorcycle driver had only a learner's licence at the time of alleged accident. Hence, the second respondent/Insurance Company is not liable to pay any compensation to the claimant.

8. Based upon the oral and documentary evidence, the Tribunal has rejected the contention of the Insurance Company that the claimant has cross the road in a negligent manner and thereby, he has contributed to the negligence.

9. On the point of quantum of compensation, based upon the medical evidence of P.W.3 Doctor has assessed the disability at 80%. P.W.3 has explained that he had examined the petitioner after 5 1/2 years and he observed that due to head injury she lost limb movments and sensitiveness. No other competent medical authorities who treated the petitioner after the accident are examined on the side of the petitioner to prove the disablement as alleged by the petitioner. Therefore the disability given by the Doctor/P.W.3 is hereby accepted to the extent of 60% based on the sources available on hand. Considering the age and injuries sustained by the petitioner at the rate of Rs.3,000/- per percentage, a sum of Rs.1,80,000/- was allowed before the trial Court.

10. On perusal of the wound certificate and discharge summaries issued by the P.W.3 and as evidenced the injury sustained by the claimant is re-fixed at 75% and accordingly,



based on calculated at Rs.3,000/- per percentage of disability awarded Rs.2,25,000/- (75%*3000) .

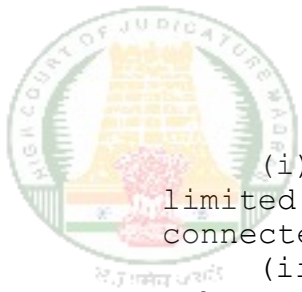
11. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 6 months. Hence, a sum of Rs.27,000/- (4,500/-*6) has awarded towards 'loss of earning' and the same is enhanced to Rs.36,000/-. With regard to 'medical expenses', Rs.1,00,000/- has awarded by the Tribunal and the same is hereby confirmed. The compensation awarded under the head 'Transportation' is enhanced from Rs.5,000/- to Rs.10,000/-, towards 'extra nourishment' is enhanced from Rs.5,000/- to Rs.10,000/-, towards 'loss of amenities' is enhanced from Rs.5,000/- to Rs.10,000/-. With regard to 'attender's charges', 'Damages to clothings and articles' and 'pain and sufferings', Rs.10,000/-, Rs.1000/- and Rs.30,000/- has awarded by the Tribunal and the same are hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 226 of 2009 is modified as follows:

S1. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning	Rs. 27,000/- (4,500/-*6)	Rs. 36,000/- (6,000/-*6)
2.	Transport to Hospital	Rs. 5,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
4.	Attender's charges	Rs. 10,000/-	Rs. 10,000/-
5.	Medical Expenses	Rs. 1,00,000/-	Rs.1,00,000/-
6.	Damages to clothings and articles	Rs. 1,000/-	Rs. 1,000/-
7.	Loss of Amenities	Rs. 5,000/-	Rs. 10,000/-
8.	Pain and suffering	Rs. 30,000/-	Rs. 30,000/-
9.	Compensation for continuing permanent disability	Rs. 1,80,000/- (60%*3000)	Rs.2,25,000/- (75%*3000)
	Total	Rs. 3,63,000/-	Rs. 4,32,000/-

The compensation awarded by the Tribunal is enhanced from Rs.3,63,000/- to Rs.4,32,000/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,



(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, connected CMP is closed.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,63,000/- to Rs.4,32,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/New India Assurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.4,32,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 181 of 2011, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ranipet, Vellore District within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Ranipet, Vellore District.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.13671

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.14599

C.M.A.No.141 of 2016

NMI (CO)

CB(14/09/2021)