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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.12.2020
DELIVERED ON : 21.01.2021
CORAM

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A(MD) No.1320 of 2010

M.Louisa Karuppayee .. Appellant/Claimant

vs.

1.Saradha

2.M/s.The New India Insurance Company Limited,
Through its Branch Manager,
147, Salai Street,
Ramanathapuram. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree, dated 20.04.2004 passed in M.C.O.P.No.11 of 2002, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Sivagangai.

For Appellant : No Appearance
For Respondents : No Appearance (for R1)
Ms.Maria Rubit for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the order, dated 20.04.2004 passed in M.C.O.P.No.11 of 2002, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Sivagangai.

2.The case of the claimant before the Tribunal is that on 04.03.2001 at about 02.30 p.m., when the claimant was waiting on the left side of the road in Madurai to Rameswaram Main Road bus stop, at that time, the first respondent's vehicle bearing Registration No.TN-67-Z-5959 was driven by its driver in a rash and negligent manner and dashed against the claimant, as a result of which, she suffered fracture on both legs and she was immediately taken to the hospital, after giving first aid treatment in Manamadurai Government Hospital and later, she was taken to Madurai Meenakshi Mission Hospital, wherein, she was undergoing treatment for one month and thereafter, her leg was removed and a artificial leg was fixed on the right leg fracture bone united in a mal-function manner, as a result of which, she could not continue her work as before. In respect of the occurrence, a case in Crime No.88 of 2001 was registered before the Manamadurai Police Station for the alleged

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offence under Sections 279 and 337 of IPC. So, claiming compensation of Rs.3,00,000/- with interest at the rate of the 12% p.a., she was before the Tribunal.

3.The first respondent remained ex-parte. The second respondent/Insurance Company stated that the accident did not take place as mentioned by the claimant and her claim amount was also highly excessive.

4.On the side of the appellant/claimant, before the Tribunal, two witnesses were examined and six documents were marked. On the side of the respondents no witness was examined and no document was marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent vehicle and on the basis of the evidence, the compensation was fixed at Rs.75,000/- with interest at the rate of the 9% p.a from the date of claim petition till the date of realization.

6.Challenging the said compensation fixed by the Tribunal, the appellant/claimant filed the present appeal before this Court on the ground that the fixation made by the Tribunal is not correct, since there was 88% of permanent disability.

7.The points for consideration in this appeal are that (i) whether the compensation can be enhanced Rs.2,00,000/- as requested by the appellant? and whether the very pathetic case of removal of one leg and another leg bones mal-united due to the accident has been duly considered by the Tribunal?.

8.The Tribunal awarded a sum of Rs.75,000/- as total compensation. In appeal, the appellant restricted her claim only to Rs.2,00,000/-. A suggestion was made to P.W.1 during cross-examination to the effect that only because of her non-absentees of device made by the Doctor, her leg has to be removed. But such a contention cannot be accepted. She was also fitted with artificial leg. P.W.2-Doctor who examined her for assessing the disability, would state that the appellant/claimant sustained fractures in both leg bones and the right leg portion below the knee was removed and because of the injuries, she suffered 88% of permanent disability, in which, the permanent disability is adjacent 70%, because in permanent disability was assessed at 18%. Even though such a decision of assessment is not acceptable, the total permanent disability because of the removal of right leg is 70%. Considering the nature of the injury, the claim made by the appellant/claimant for enhancement upto Rs.2,00,000/- can be awarded. But the appellant/claimant was reported to be dead during the pendency of this appeal. But the legal heirs were not impleaded to represent the estate of the appellant/claimant. Hence, the Civil

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Miscellaneous Appeal is liable to be dismissed and accordingly, it is dismissed as abated. No costs.

Sd/-

Assistant Registrar (CsIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Chief Judicial Magistrate ,
(Motor Accident Claims Tribunal)
Sivagangai.

2.The Record Keeper,(2Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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KB(09.02.2021) 3P 4C

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