



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

WEB COPY

C.M.A(MD)No.963 of 2010

Udaiyal : Appellant/Claimant
Vs.
1.Panneer Selvam
2.The Divisional Manager,
United India Insurance Company Ltd.,
7A, West Masi Street,
Madurai, Madurai District. : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, to set aside the award in M.C.O.P.No.29 of 2007 on the file of the Motor Accident Claims Tribunal, Paramakudi, dated 07.01.2010 and to enhance the award amount.

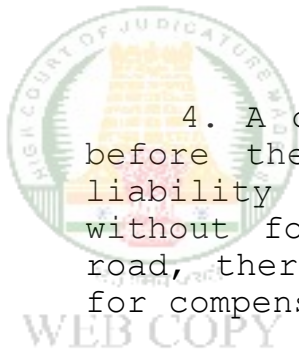
For Appellant : Mr.D.Senthil
For R1 : Mr.T.Lajapathi Roy
For R2 : Mr.S.Natarajan

JUDGMENT

This appeal has been preferred by the claimant seeking enhancement of compensation.

2. The claim petition in M.C.O.P.No.29 of 2007 was filed by the appellant before the Motor Accident Claims Tribunal, Paramakudi seeking compensation of Rs.1,50,000/-. The case of the claimant is that on 10.10.2006 she was not well and hence, she travelled in a bus along with her husband from her native place to Paramakudi. After alighting from the bus, both were standing near five corner bus stop to board a mini bus and at that time, a Herohonda motorcycle TN-65-B-7665, which was owned by the first respondent insured with the second respondent came in a high speed and hit against her. In the accident, she sustained fracture and injuries on her body. Therefore, she was taken to Paramakudi Government Hospital and after providing first-aid, she was referred to Government Rajaji Hospital, Madurai.

3. The claimant would state that from 10.10.2006 to 09.11.2006 she was taking treatment as inpatient in Government Rajaji Hospital, Madurai and she also underwent surgery. It is further stated that she is an agricultural coolie and her husband is senior citizen aged about 70 years old and hence, their family is suffering.



4. A counter affidavit has been filed by the second respondent before the Tribunal disputing the manner of accident and their liability to pay compensation. It is their case that the claimant without following the traffic regulations attempted to cross the road, thereby invited the accident, therefore, she is not entitled for compensation.

5. Before the Tribunal, in order to prove the case of the claimant, P.Ws.1 to 3 were examined and Exs.P1 to P12 were marked. On the side of the respondents three witnesses were examined and five documents were produced.

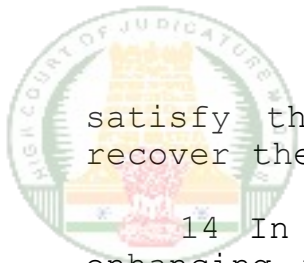
6. The Tribunal, based on the evidence of P.W.1 and the documents Ex.P1-FIR, Ex.P2-Observation Mahazar, Ex.P3-sketch, Ex.P4-Motor Vehicle Inspector Report, Ex.P5-Charge-sheet, held that the driver of the two-wheeler caused accident. The said finding has become final, as no appeal has been preferred against the findings of the Tribunal.

7. Insofar as quantum of compensation is concerned, P.W.1 has stated that for a period of 30 days i.e., from 10.10.2006 to 09.11.2006 she took treatment as Inpatient in Government Rajaji Hospital, Madurai. The evidence of P.W.2 and Ex.P8 discharge summary corroborated the evidence of P.W.1. P.W.2-doctor Palaniappan after examining the claimant and perusing the medical records, issued a Ex.P9 disability certificate stating that she sustained 50% permanent disability. Since, P.W.2 did not give treatment to the claimant and she was examined by P.W.2 on 23.08.2008, the Tribunal has taken the disability as 25%. According to P.W.1 she has to spend another Rs.15,000/- for removal of the plate.

8. The Tribunal considering the evidence of claimant, has awarded a sum of Rs.25,000/- for injuries, Rs.3,000/- for attendant charges, Rs.1,500/- for extra nourishment, Rs.3,000/- for loss of income, Rs.3,000/- for transportation, Rs.25,000/- for permanent disability and Rs.10,000/- for future medical expenses.

9. It is the submission of the learned counsel for the appellant that though it is proved that the claimant had sustained fracture and he was treated as inpatient for more than 30 days, the Tribunal has not awarded any amount for pain and suffering. In respect of other heads also, the award amount is very meager.

10. Considering the materials available on record, this Court is of the opinion that the claimant is entitled to compensation of Rs.15,000/- for pain and suffering and Rs.10,000/- for attendant charges. The award of the tribunal is modified as under:-



satisfy the award amount at the first instance and thereafter, recover the said amount from the owner of the vehicle.

14 In the result, this Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.70,500/- to a sum of **Rs.95,000/-**. **The original award amount of the Tribunal shall carry interest at the rate of 7.5% per annum and the enhanced award amount shall carry interest at the rate of 6% p.a.**

15. The second respondent-Insurance Company shall deposit the modified award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any and thereafter, recover the same from the owner of the vehicle. On such deposit, the claimant is entitled to withdraw the entire amount. No costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal,
Paramakudi.

2.V.R. Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SENTHIL, Advocate (SR-1969[F] dated 25/01/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-2090[F] dated 25/01/2021)

+1 CC to M/s.S.NATARAJAN, Advocate (SR-1966[F] dated 25/01/2021)

C.M.A(MD)No.963 of 2010
22.01.2021

ES (CO)

KB(09.03.2021) 4P 7C