



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.12.2020

Pronounced On : 05.01.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A (MD) No.882 of 2016

P.Ponmalar : Appellant/Claimant

Vs.

1. S.Mano Prabhakar

2. The Proprietor,
TVL Sri Modern Agencies,
Srivilliputtur Taluk,
Virudhunagar District.

3. The Branch Manager,
United India Insurance Company Limited,
394/8. Lucky Petrol Baluk,
Srivilliputtur,
Virudhunagar District.

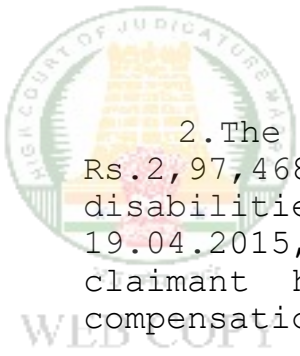
: Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Court of Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur in M.C.O.P.No.74 of 2015, on 01.03.2016 by way of enhancing the compensation amount.

For Appellant	: Mr.G.Marimuthu
For Respondents	: Mr.S.Venkatesh, for Mr.A.Sivaji, for R2
	: Mr.A.Ilango, for R3
For R1	: No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, challenging the award dated 01.03.2016, passed by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputtur in M.C.O.P.No.74 of 2015, and seeking enhancement of the compensation amount.



2.The injured claimant, who was awarded compensation of Rs.2,97,468/- payable by the third respondent/Insurer, for the disabilities suffered by her, consequent to an accident occurred on 19.04.2015, challenged the quantum of compensation awarded and the claimant has filed the present appeal seeking enhancement of compensation.

3.The main contention of the appellant/injured is that the trial Court has not at all awarded any amount towards loss of amenities, future medical expenses and transportation charges, that the tribunal has granted very meagre amount towards pain and sufferings, loss of income and attendant charges and that though the claimant has restricted her claim at Rs.7,50,000/-, the tribunal has only awarded a sum of Rs.2,97,468/-, which is very low and inadequate.

4.The only point that arises for consideration is as to whether the quantum of compensation arrived at by the tribunal is low and is not in accordance with law?

5.The case of the claimant is that she has suffered compound fracture on her left leg with bone loss, that she had undergone a surgery and was implanted with steel rod and screws and that she has suffered permanent disability. The tribunal, after considering the evidence on record, including the evidence of the Medical Officer, has fixed the partial permanent disability at 49% and by adopting percentage method, granted Rs.1,47,000/- towards disability.

6.The claimant has neither disputed nor challenged the amount granted towards disability. But the main contention of the claimant is that though the Medical Officer had stated that the claimant has to undergo another surgery for removal of plates and screws, the tribunal has not awarded any amount towards future medical expenses. P.W.2/Medical Officer in his evidence would say that the implants have to be removed and she is in need of some amount for the future medical expenses. Admittedly, the tribunal has not awarded any amount towards future medical expenses. Considering the evidence of P.W.2/Medical Officer, this Court is of the view that a sum of Rs.30,000/- is to be granted towards future medical expenses.

7.The next contention of the appellant/claimant is that the claimant had suffered bone injury in her left leg, that the loss sustained by her cannot be calculated in terms of money, that she had lost several amenities in the life after accident and that the tribunal has not awarded any amount under the head of loss of amenities.

8.The next contention is that the claimant, after accident, was immediately taken to Government Hospital for treatment and thereafter, she was admitted as in-patient at Sakthibala Hospital,



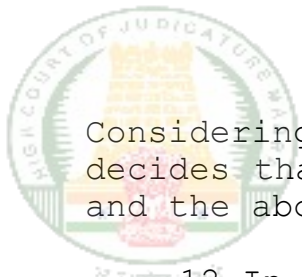
Rajapalayam, but the tribunal has not granted any amount towards transportation charges. It is her further case that she undergone much pain and sufferings during and after treatment and that the tribunal has only awarded a sum of Rs.20,000/- for pain and sufferings, which is very low. The claimant's further contention is that the tribunal has awarded only Rs.5,000/- towards attendant charges and the same is also low and inadequate.

9.As rightly contended by the learned counsel for the appellant, the trial Court has not awarded any amount towards loss of amenities and transportation expenses. Considering the nature of the injuries suffered, period of treatment and the disabilities sustained, this Court is of the view that the claimant is entitled to get Rs.25,000/- towards loss of amenities and Rs.10,000/- for transportation charges. As rightly contended by the learned counsel for the appellant, amount granted under the heads of pain and sufferings and attendant charges are low and the same are to be enhanced to Rs.40,000/- and Rs.10,000/- respectively.

10.The learned counsel for the appellant would contend that though the tribunal has granted loss of income for four months at Rs.30,000/-, it ought to have granted for seven months. But as rightly pointed out by the learned counsel for the insurer, there is absolutely no evidence to show that she had suffered loss of income for seven months and hence, the amount granted towards the loss of income is liable to be sustained.

11.Considering the above, this Court decides that the claimant is entitled to get compensation under the various heads as follows:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Partial permanent disability	Rs.1,47,000/-	Rs.1,47,000/-
Pain and sufferings	Rs. 20,000/-	Rs. 40,000/-
Loss of income	Rs. 30,000/-	Rs. 30,000/-
Nutritious food	Rs. 5,000/-	Rs. 5,000/-
Attender	Rs. 5,000/-	Rs. 10,000/-
Medical expenses	Rs. 90,468/-	Rs. 90,468/-
Loss of amenities	-	Rs. 25,000/-
Future Medical expenses	-	Rs. 30,000/-
Transportation charges	-	Rs. 10,000/-
Total	Rs.2,97,468/-	Rs.3,87,468/-



Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is enhanced from Rs.2,97,468/- to Rs.3,87,468/- with interest at 7.5% per annum. The third respondent/Insurer is directed to deposit the modified/enhanced award amount, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

das

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Virudhunagar District at Srivilliputtur.

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

Order made in
C.M.A(MD)No.882 of 2016
05.01.2021

KMV(CO)
CS(19.01.2021) 4P 4C