



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 1943 of 2018

Nayagam

... Appellant/Petitioner

Vs

1. K.Sugumar

2. The New India Assurance Company Limited.,
Rep. by Branch Manager
No.110, Gandhi Market Road
Arni.

3. S.Ezhilarasi

4. The Oriental Insurance Company Limited.,
Rep. by Divisional Manager
Katpadi Road,
Vellore.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 against the Judgment and Decree in M.C.O.P.No. 39 of 2009 dated 06.04.2016 on the file of the Motor Accident Claims Tribunal/ Sub-Court, Arni.

For Appellant : Mr. P.Satheesh Kumar

For RR 1 & 3 : Exparte

For 2nd Respondent : No appearance

For 4th Respondent : Mr. N.Sampath

J U D G M E N T

Heard Mr.P.Satheesh Kumar, learned counsel appearing for the appellant and Mr.M.Sampath, learned counsel for the fourth



respondent.

2. The claimant in M.C.O.P.No. 39 of 2009 which was pending on the file of the Motor Accident Claims Tribunal / Sub Court, Arni, is the appellant herein. She is aggrieved by the Judgment dated 06.04.2016, whereby, for the injuries suffered, the Tribunal had granted a compensation at Rs.62,000/-. Seeking enhancement of the aforementioned compensation, the present Civil Miscellaneous Appeal had been filed.

3. It must also be mentioned that though the petition had been filed against four respondents, the petition had been dismissed against the respondent Nos. 1 & 2, namely, K.Sugumar and the New India Assurance company Ltd., Rep. by Branch Manager, Arni. The fourth respondent, the Oriental Insurance Company Ltd., represented by Divisional Manager, Vellore, is contesting the present Appeal along with the third respondent, S.Ezhilarasi. The third respondent remained ex-parte during the Trial Court.

4. A perusal of the records reveal that the appellant, Nayagam, w/o. Vadivelu, who was an agricultural coolie, on 31.10.2008 at around 10 a.m., was proceeding as a passenger in an Auto bearing Registration No. TN - 23- AV 0211 which belonged to the first respondent and was insured with the second respondent and was proceeding from Musiri Village to Walajah. At that time, a Tata ACR Lorry bearing Registration No. TN 23 AX 2905 coming in the opposite direction and belonging to the third respondent and insured with the fourth respondent, who is now contesting the present appeal is alleged to have been driven in a rash and negligent manner and dashed against the auto. The petitioner suffered injuries, which were assessed by the Medical professional as multiple injuries all over the body, with injury on the right shoulder, both legs, hands, right eye and also fracture of right hand and skull bone. The petitioner was in bed in Government VMC Hospital, Vellore, for five days. Claiming compensation the injuries suffered, she preferred a claim petition in M.C.O.P.No. 39 of 2009.

5. The present Appeal has been filed questioning the compensation granted by the Tribunal.

6. It is contended by Mr.P. Satheesh Kumar, learned counsel for the appellant that the Tribunal had, though there was evidence established that there had been a fracture of the right hand and also skull bone had still thought it fit to reduce the disability to 20% from 30% as assessed by the medical professionals. This, it has been claimed by Mr.P.Satheesh Kumar,



was arbitrary.

7. The appellant was working as an agricultural coolie and naturally, required full functioning of the body to discharge such work. Having being engaged as an agricultural coolie, it would also be difficult for the appellant to do any other physical work as such expertise may not be with her. For those reason, I would go with the assessment of the medical professionals and retain the disability at 30%.

8. With respect to the income, the Tribunal had determined a sum of Rs.2,500/- and had thereafter calculated the loss owing of future income at $3,000 \times 10 \times 17$. The digit '17' would reflect the multiplier but defies any explanation as what the Tribunal meant by $3,000 \times 10$. Therefore, let me revisit the calculation and fixed Rs.2,000/- at 1% per disability which would indicate that towards this particular head, the petitioner would get a sum of Rs.60,000/- ($2,000 \times 30$).

9. The Tribunal had also given compensation towards loss of monthly income at Rs.5,000/- which I would increase to Rs.10,000/-. I would retain the compensation granted for transport expenses at Rs.5,000/- but would enhance the nutrients or additional food required for recovery from Rs.1,000/- to Rs.3,000/-. This would indicate that the total compensation now granted is Rs.78,000/-. It would also further indicate that the difference in the compensation granted by the Tribunal and by this Court is at Rs.16,000/-. I am informed that there is no delay in filing the Appeal.

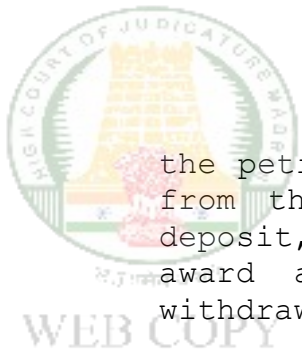
10. The compensation amount is therefore granted as follows:-

1. Disability	:Rs.	60,000/-
2. Pain and suffering and mental agony	:Rs.	10,000/-
3. Transport to Hospital	:Rs.	5,000/-
4. Extra nourishment	:Rs.	3,000/-

		Rs. 78,000/-

11. The additional compensation granted is Rs.16,000/-. In fine, the Appeal is partly allowed. No costs. The award is modified. The compensation award is enhanced to Rs.78,000/-.

12. The second respondent is directed to deposit the enhanced amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of filing of



the petition till date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No order as to costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vsg

To

1.The Motor Accident Claims Tribunal,
Sub Court,
Arni, Thiruvannamalai.

Copy to:

The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr.P.Satheesh Kumar, Advocate SR.No.11846

+1cc to Mr.N.Sampath, Advocate SR.No.12245

CMA No. 1943 of 2018

AD(CO)
CB(29/03/2022)