



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.2703 and 2872 of 2021
and

C.M.P.No.16499 of 2021

C.M.A.No.2703 of 2021

Mary Cherian

... Appellant

Vs.

1. N.Rajesh

2. United India Insurance Co., Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 01.10.2020 made in MCOP No.912 of 2015 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.J.Chandran for R2

R1 : No Appearance

C.M.A.No.2872 of 2021

The Branch Manager,
United India Insurance Co. Ltd.,
Silingi Buildings,
No.134, Greams Road,
Chennai - 600 006.

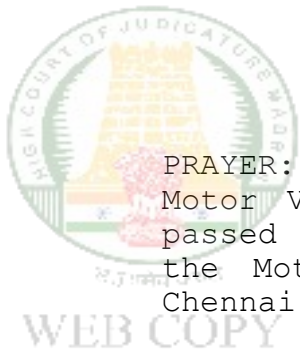
... Appellants

Vs.

1.Mary Cherian

2.N.Rajesh

... Respondents



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment passed in MCOP No.912 of 2015 dated 01.10.2020 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court), Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.K.Varadha Kamaraj for R1
No appearance for R2

COMMON JUDGMENT

(Common Judgment of the Court was made by K.KALYANASUNDARAM.,J)

CMA No.2703 of 2021 is filed by the claimant being dissatisfied with the award of the Tribunal passed in MCOP No.912 of 2015 dated 01.10.2020. CMA No.2872 of 2021 has been preferred by the Insurance Company assailing the award passed in the same MCOP. Since both the appeals arise out of the same order passed in the MCOP dated 01.10.2020, both are heard together and disposed of by this common Judgment. For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

2.According to the claimant, on 14.11.2013 at 11.15 hours, she was riding her motorcycle bearing Reg.No.TN-07-AV-3490 on the Seetha Khadi Junction, Panner Street, Mugappair. When she were near J.A.Arts College, a lorry bearing Reg.No.TN-09-H-2403 driven by its driver in a rash and negligent manner, hit her vehicle. In the impact, she sustained grievous injuries. The driver of the lorry was responsible for the accident. The first respondent is the owner and the second respondent is the insurer of the offending lorry. Hence, she filed the claim petition seeking compensation of Rs.50,00,000/-.

3.The first respondent/owner of the vehicle remained ex-parte before the Tribunal and the Insurance Company filed a counter disputing the manner of accident, age, avocation and income of the claimant and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case of claimants, she examined herself as P.W.1 and marked Exs.P.1 to Ex.P.17. On the side of



the Insurance Company, R.W.1, one Sakthivel, Assistant Manager of the Insurance company was examined and Exs.R1 to R3 were marked. Besides, Ex.C.1-Disability Certificate was marked.

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5.The Tribunal, after considering the oral and documentary evidence, held that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.26,00,500/-. Challenging the said award, while CMA.No.2703 of 2021 has been filed by the claimant on the ground that the award is meager, CMA No.2872 of 2021 has been filed by the Insurance Company on the ground that the award amount is on the higher side.

6.The learned counsel appearing for the Insurance Company has contended that the award is on the higher side and it requires reduction and the learned counsel appearing for the claimant would submit that the award is very meager and it has to be enhanced.

7.In the case on hand, to prove the employment of the claimant, no document has been produced, however, the Tribunal, only after considering the evidence of the claimant (P.W.1) and the copy of the M.Com and B.Ed., Certificate (Ex.P.14), fixed the monthly income of the deceased as Rs.12,000/- and added 50% towards future prospects. Since there is no document to prove the employment, adding of 50% is unsustainable, hence, the same is reduced to 25%. As per Disability Certificate (Ex.C.1), the claimant sustained 30% disability, but the Tribunal, without considering the same, fixed the disability as 50%. Hence, the amount of Rs.16,20,000/- awarded under the head of loss of earnings is reduced to Rs.8,10,000/- ($12000 + 3000(25\%) = 15000 \times 12 \times 15 \times 30 / 100$). Considering the nature of injuries and the period of treatment, the amount of Rs.75,000/- awarded towards pain and suffering is enhanced to Rs.1,00,000/-; Rs.50,000/- towards loss of amenities is enhanced to Rs.1,00,000/-; and Rs.25,500/- towards attender charges is enhanced to Rs.50,000/-. Rs.50,000/- is awarded towards Transportation. Rs.25,000/- is awarded towards extra-nourishment. Hence, Rs.50,000/- awarded by the Tribunal under the head of extra-nourishment and transport expenses is modified. The amount of Rs.7,74,806/- awarded towards medical expenses and Rs.5,000/- awarded towards damage to clothes and motorcycle are confirmed. The rate of interest fixed by the Tribunal as 7.5% is confirmed.

8. Accordingly, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-



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Heads	Amount awarded by the Tribunal Rs.	Re-quantified Amount by this Court Rs.	Status
Pain and Suffering	75,000/-	1,00,000/-	enhanced
Extra-nourishment and Transportation	50,000/-	Nil	set aside
Loss of earnings	16,20,000/-	8,10,000/-	reduced
Medical Expenses	7,74,806/-	7,74,806/-	confirmed
Loss of amenities	50,000/-	1,00,000/-	enhanced
Attender charges	25,500/-	50,000/-	enhanced
Damage to the clothes & motorcycle	5,000/-	5,000/-	confirmed
Extra nourishment	Nil	25,000/-	granted
Transportation	Nil	50,000/-	granted
Total	26,00,306/-	19,14,806/-	reduced
Rounded off	26,00,500/-	19,15,000/-	

9. In such view of the matter, CMA No.2872 of 2021 filed by the Insurance Company is partly allowed and CMA No.2703 of 2021 filed by the claimant is dismissed. The award amount of Rs.26,00,500/- is scaled down to Rs.19,15,000/-. The Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the modified award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

skn



To

1. The Motor Accident Claims Tribunal,
(V Small Causes Court), Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.18523

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.18043

C.M.A.Nos.2703 and 2872 of 2021
and
C.M.P.No.16499 of 2021

JPL (CO)
SU (08/06/2022)