



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.548 of 2017

Rukmani

...Appellant

Vs.

1.Muthu

(Notice to R1 may be dispensed with for the time being for which separate petition is filed herewith)

2.The New India Assurance Company Limited,
Branch Office, 66-C, North Car Street,
Tiruchengode - 637 211.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.07.2013, in M.C.O.P.No. 463 of 2011 on the file of the Motor Accidents Claims Tribunal, the Subordinate Court, Sankari.

For Appellant : Mr.C.Kulanthaivel
For R1 : Dispensed with
For R2 : Mrs.R.Sreevidhya

JUDGMENT

The appellant is the claimant in M.C.O.P.No.463 of 2011, on the file of the Motor Accidents Claims Tribunal cum Subordinate Court, Sankari. She has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 27.05.2011.

2) The appellant/claimant was aged 49 years on the date of the accident. She was working as a Textile worker, earning a sum of Rs.5,000/- per month.

3) On 27.05.2011 at about 1.00 pm., the appellant/claimant sustained grievous injuries owing to the rash driving of a share auto bearing Registration No.TN 34 F



2318. She suffered fracture on both legs. She was taken to Azhagiri Hospital, Pallipalayam where she was admitted as in-patient from 27.05.2011. She was given treatment for her injuries by the Doctor in the above hospital. Due to the said accident, the appellant/claimant sustained i) malunited fracture on left ankle of lateral malleolus bone ii) malunited fracture on right thigh of femur bone (long steel plates and screws fixed inside the right femur bone as well as left ankle) and injuries all over the body.

4) It is stated that the rash and negligent riding of the driver of the above said share auto was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

5) The United India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Exs.P1 to P7 were marked. On the side of the respondents, D.W.1 to D.W.3 were examined and Exs.D1 to D6 were marked. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.1,53,400/- together with interest at the rate of 7.5% per annum as compensation to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6) After hearing both the parties and perusing the materials available on records, it is seen that the rash and negligence fixed on the part of the driver of the said share auto is not in dispute and the same is hereby confirmed.

7) The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant has suffered fracture of i) malunited fracture on left ankle of lateral malleolus bone ii) malunited fracture on right thigh of femur bone (long steel plates and screws are fixed inside the right femur bone as well as left ankle) and injuries all over the body. He would contend that the appellant/claimant was admitted as an inpatient in the Azagiri Hospital, Pallipalayam. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

8) The learned counsel appearing for the New India Insurance Company Limited would contend that the



appellant/claimant has not suffered any 'functional disability', but, the Tribunal has adopted multiplier method and the same is erroneous. He would also contend that the award passed by the Tribunal under the other heads are just and reasonable and they need not be disturbed.

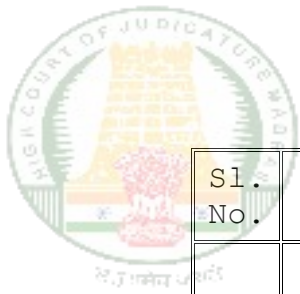
9) After hearing both sides and taking note of the fact that Exhibit P5 Disability Certificate and also the evidence of the Doctor P.W.2 R.Krishnasamy, the disability has been fixed by the Tribunal at 45% and accordingly Rs.67,500/- (Rs.1,500/-x45%) has been awarded. Taking into consideration the disability suffered by the claimant, this Court enhances the compensation for 'disability' to 55% and accordingly, awards an amount of Rs.1,65,000/- (Rs.3,000/-x55%).

10) Taking note of the injuries sustained by the claimant, it could be said that the appellant/claimant could not have attended duties for 3 months. Accordingly, the 'loss of income' during the period of treatment is enhanced from Rs.3,000/- to Rs.15,000/- (5,000x3).

11) Furthermore, the Tribunal has awarded a sum of Rs.10,000/- towards 'pain and sufferings' and this Court enhances that Rs.20,000/-. Taking into consideration, the nature of injuries that she was taking treatment as in-patient for more than 15 days, this Court grants a sum of Rs.7,500/- under the heads of 'Transport charges'. The Tribunal has awarded a sum of Rs.61,900/- under the head of 'medical expenses' and this amount is hereby confirmed.

12) Accordingly, the award of the Tribunal in M.C.O.P.No. 548 of 2017 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	permanent disability	Rs. 67,500/-	Rs. 1,65,000/-
2.	Loss of income for 3 months (Rs.3000/- x3)	Rs. 9,000/-	Rs. 15,000/-
3.	Pain and sufferings	Rs. 10,000/-	Rs. 20,000/-
4.	Transport charges	Rs. 5,000/-	Rs. 7,500/-
5.	Medical Expenses	Rs. 61,900/-	Rs. 61,900/-



Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs. 1,53,400/-	Rs. 2,69,400/-

The compensation awarded by the Tribunal is enhanced from Rs.1,53,400/- to Rs.2,69,400/-. The difference amount shall carry interest at the rate of 7.5% per annum.

13) In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,53,400/- to Rs.2,69,400/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/United India Insurance Company Limited is directed to deposite the enhanced compensation amount awarded by this court, i.e., Rs.2,69,400/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 463 of 2011, dated 30.07.2013 on the file of the Motor Accidents Claims Tribunal cum Subordinate Court, Sankari within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge
The Motor Accidents Claims Tribunal,
Subordinate Court, Sankari

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

+1 CC to Mrs.R.Sreevidhya, Advocate sr 8292
+1 CC to Mr.C.Kulanthaivel, Advocate sr 8289.

C.M.A.No.548 of 2017

SVI (CO)
SP(21/03/2022)