



WEB COPY



C.M.A.No.915 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.915 of 2020

Sudarmani

...Appellant

vs.

1. Thaivan Plastic Industries,
D.No.34/7, Puliamara Thottam Street,
Karuvampalayam,
Tiruppur – 641 604.

2. The New India Assurance Co. Ltd.,
Sethu Krishan Trade Centre,
II Floor, No.133/31A,
Trichy Main Road,
Gugai, Salem 636 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.01.2018 passed in M.C.O.P.No.2519 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge No.1, Salem.

For Appellant : Mr.C.Thangaraju

For R1 : M/s.D.Chitra Maragatham

For R2 : Mr.J.Chandran



C.M.A.No.915 of 2020

* * * * *

J U D G M E N T

WEB COPY

This appeal is filed against the Judgment and Decree dated 05.01.2018 passed in M.C.O.P.No.2519 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge No.1, Salem. The said appeal is filed by the claimant seeking enhancement of compensation.

2.The summary of the facts leading to the appeal are as follows:

On 12.09.2015 at about 10.30 p.m., while the claimant was riding his Bajaj Pulsar, Motorcycle, bearing Registration No.TN 77 Z 6804 at Ulundurpet By-pass near Perumal Kovil, an Eicher Lorry bearing Registration No.TN 42 9528 driven by its driver in a rash and negligent manner hit the claimant's vehicle, due to which the claimant fell down and sustained multiple grievous injuries all over the body. Initially, the claimant was taken to the General Hospital, Salem and for further treatment he was taken to Kurinji Hospital, Salem. At the time of accident, the claimant was aged about 23 years and he was working as Supervisor, earning a sum of Rs.12,000/- per month. The claimant therefore filed the claim petition seeking Rs.25,00,000/- as compensation for the injuries sustained by him in



C.M.A.No.915 of 2020

the accident.

WEB COPY

3.The first respondent initially appeared through counsel and thereafter remained absent. The second respondent/Insurance company appeared and filed the counter. The second respondent in its counter denied all the averments raised by the claimant. The second respondent contended that the claim of the claimant for a sum of Rs.25,00,000/- was exorbitant and untenable.

4.Before the Claims Tribunal the claimant examined himself as PW1 and the claimant's daughter was examined as PW2 and Ex.P1 to P10 were marked. The second respondent examined two witnesses and no documents were marked.

5.The Motor Accident Claims Tribunal on an assessment of entire evidence on record returned a finding of negligence against the driver of the first respondent and mulcted the liability on the second respondent, who was the insurer of the first respondent. The Tribunal awarded a sum of Rs.1,29,841/- as compensation along with interest at the rate of 7.5%. Not



C.M.A.No.915 of 2020

satisfied by the amount awarded by the Tribunal, the claimant has filed the appeal challenging the Judgment and Decree of the Claims Tribunal.

6.The learned counsel for the appellant submitted that the award of the Tribunal towards permanent disability was disproportionate to the nature of injuries sustained by the claimant. He further submitted that the Tribunal failed to award just compensation towards attender charges and other heads and hence prayed that the compensation may be enhanced.

7.The learned counsel for the second respondent submitted that the award passed by the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8.I heard both the learned counsel and I have perused the records.

9.The learned counsel for the appellant submitted that the Tribunal failed to note that the accident occurred on 12.09.2015 and therefore the Tribunal ought to have awarded Rs.4,000/- per percentage of disability



C.M.A.No.915 of 2020

instead of Rs.3,000/-, which was very low. As the accident occurred in 2015, I am of the view that the appellant is entitled to Rs.4,000/- per percentage of disability. The appellant sustained fracture on the right forearm and therefore in my view the claimant is entitled to compensation towards attender charges and loss of income for the treatment period.

10. In view of the above discussion, I am of the view that the award of the Tribunal needs to be modified and the same is modified as follows:

Sl. No.	Particulars	Tribunal	Enhancement	Court
1	Permanent Disability	Rs.51,000/-	Rs.17,000/-	Rs.68,000/-
2	Pain & suffering	Rs.20,000/-		Rs.20,000/-
3	Transport Charges	Rs.10,000/-		Rs.10,000/-
4	Medical Bills	Rs.18,841/-		Rs.18,841/-
5	Nutritious Food	Rs.15,000/-		Rs.15,000/-
6	Loss of Amenities	Rs.15,000/-		Rs.15,000/-
7	Attender Charges	Nil	Rs.10,000/-	Rs.10,000/-
8	Loss of Income	Nil	Rs.10,000/-	Rs.10,000/-
TOTAL		Rs.1,29,841/-	Rs.37,000/-	Rs.1,66,841/- rounded off to Rs.1,67,000/-



C.M.A.No.915 of 2020

11.The appellant shall be entitled for a sum of Rs.1,67,000/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. The Insurance Company is directed to deposit the amount of Rs.1,67,000/- along with interest at the rate of 7.5%, within a period of six weeks from the date of receipt of a copy of this order less the amount already deposited, if any. On such deposit, the claimant shall be entitled to withdraw the said amount by making proper application before the Tribunal.

12.In the result, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

06.03.2023

Index : yes/no

Internet : yes/no

ah

To

1.The Motor Accidents Claims Tribunal/
Special Sub Judge No.1,
Salem.

2.The New India Assurance Co. Ltd.,



C.M.A.No.915 of 2020

Sethu Krishan Trade Centre,
II Floor, No.133/31A,
Trichy Main Road,
Gugai, Salem 636 006.

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

N.MALA, J.

ah

C.M.A.No.915 of 2020



WEB COPY



C.M.A.No.915 of 2020

06.03.2023