



C.M.A.No.3759 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2023

PRONOUNCED ON : 17.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.3759 of 2019

Mariyammal

... Appellant

vs.

1.Murugesan

2.The United India Insurance Co. Ltd.,
104A, Ranga Building, Perumanur Main Road,
Near Four Roads, Salem-636 007.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.1054 of 2017, dated 01.12.2018 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem.

For Appellant : MrT.S.Arthanareeswaran

For Respondents : R1- Served – No Appearance
Mr.C.Paranthaman [R2]



C.M.A.No.3759 of 2019

WEB COPY

JUDGMENT

Aggrieved of the award passed in M.C.O.P.No.1054 of 2017, dated 01.12.2018 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem, the claimant has preferred this appeal for enhancement of compensation.

The facts in brief:

2. On 12.12.2016 at about 12.30 noon, while the petitioner was walking along Pattaikoil – Ammapettai main road near Chitheswara bus stop, a two wheeler Hero Honda Splendor Plus bearing Registration No.TN-30-M-4087 came in a negligent manner in a high speed and hit her behind. Resultantly, the claimant sustained grievous injuries and admitted in the Hospital. She was 56 years old at the time of accident and she was a construction coolie and earning a sum of Rs.9,000/- p.m. As the erred vehicle was insured with the 2nd respondent / Insurance Company, the owner of the erred vehicle namely 1st respondent and the 2nd respondent / Insurance Company are jointly and severally liable to pay compensation to the petitioner to the tune of Rs.15,00,000/-.



WEB COPY 3. On behalf of the 1st respondent it is stated in the counter that the manner in which the accident occurred and the injuries said to have been sustained by the claimant and the treatment details, work, income, age of the claimant, he was put to strict proof and as the policy is in force, the 2nd respondent is liable to pay compensation to the claimant.

4. Whereas, the 2nd respondent side has also stated that the claimant was put to strict proof about the above said details. It is further stated that the 1st respondent did not possess a valid driving licence and thus he has violated the policy conditions and the compensation claimed is also on the higher side. Therefore, the 2nd respondent is not liable to pay any compensation to the claimant.

5. The learned counsel for the appellant/claimant would contend that the petitioner who was aged about 56 years and working as construction worker having suffered fracture of both bones in right leg-lower/third. She was in hospital as an inpatient from 13.12.2016 to 19.12.2016. She was earning Rs.9,000/- p.m. The Tribunal has awarded compensation for a sum



C.M.A.No.3759 of 2019

of Rs.1,84,319/- which is not sufficient in all aspects.

WEB COPY

6. Per contra, the learned counsel for the 2nd respondent / Insurance Company would argue that the Tribunal after taking into consideration the age, work, income and the nature of injuries, has passed an award which is a reasonable one and need not be interfered with.

7. The manner in which the accident had taken place is not in dispute. The claimant herein having met with an accident and suffered fracture of both bones in right leg-lower/third, for which she was in the hospital as an inpatient from 13.12.2016 and got discharged on 19.12.2016. She had undergone surgery where Open Reduction Internal Fixation with interlocking was done. The Medical Board has assessed her disability at 25% and categorised as permanent disability with the following defects:

- 1) Difficulty in sitting crossed legged and squatting, walking in slopes.
- 2) Pain at right knees.
- 3) Malunion of tibia.



8. Considering the age of the claimant, injury sustained and nature of

work she was doing, the following formula emerges: The Medical Board has assessed the disability @ 25%. The claimant who suffered fracture of both bones in right leg has to move around and necessarily carry weight who is said to be mason coolie. She also suffers from malunion of tibia. Considering the same, under the head of disability, Rs.4000/- per percentage is hereby granted and the same would work out to a sum of Rs.1,00,000/- (Rs.4000/- X 25). The Tribunal had fixed Rs.7,500/- as monthly income of the claimant. As regards loss of income, the claimant had suffered both bone fracture in right leg and Malunion of tibia, therefore, loss of income for 10 months is granted, it would come to Rs.7,500/- X 10 = Rs.75,000/-. In all other aspects, the award of the Tribunal appears to be very reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:



C.M.A.No.3759 of 2019

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Disability	Rs. 90,714/-	Rs. 1,00,000/-	Enhanced
2	Loss of income for 10 months (Rs.7,500/- X 10)	NIL	Rs. 75,000/-	Granted
3	Pain and Suffering	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	Loss of Amenities	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	Medical Expenses	Rs. 55,605/-	Rs. 55,605/-	Confirmed
6	Transportation	Rs. 5,000/-	Rs. 5,000/-	Confirmed
7	Extra Nourishment	Rs. 7,500/-	Rs. 7,500/-	Confirmed
8	Attender Charges	Rs. 5,000/-	Rs. 5,000/-	Confirmed
9	Damage to Clothes	Rs. 5,00/-	Rs. 500/-	Confirmed
	TOTAL	Rs.1,84,319/-	Rs.2,68,605/-	

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,84,319/- to Rs.2,68,605/- which would carry interest at the rate of



C.M.A.No.3759 of 2019

WEB COPY

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,84,319/- to Rs.2,68,605/-.

(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 receipt of the Court fee.

(iv) The 2nd Respondent / Insurance Company is directed to deposit the modified compensation amount i.e., Rs.2,68,605- (less the amount already deposited if any) 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.1054 of 2017, dated 01.12.2018 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No.II, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment and then recover the same from the 1st respondent / owner of the two wheeler bearing Registration No.TN-30-M-4087 on the same cause of action.



C.M.A.No.3759 of 2019

(v) On such deposit being made, the appellant / claimant is at liberty

to withdraw the same by filing necessary cheque application.

17.03.2023

Index : Yes/No

Speaking / Non-speaking order

ssn

R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge No.II,
Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

C.M.A.No.3759 of 2019



WEB COPY



C.M.A.No.3759 of 2019

17.03.2023