



WEB COPY



CMA.No.1083 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1083 of 2017

Rajakumari

.. Appellant

Vs.

1.Poovendarasu

2.Divisional Manager,

United India Insurance Company Limited.,

No.46, Katpadi Salai,

Vellore.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 14.03.2012 made in M.A.C.T.O.P.No.363 of 2008 on the file of the Motor Accidents Claims Tribunal/Principal Sub-Judge, Tiruvannamalai.

For Appellant : Mr.M.Malar

For Respondents : Mr.C.Paranthaman for R2

Set exparte - R1

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 14.03.2012 passed in M.A.C.T.O.P.No.363 of 2008 by the Motor Accident Claims Tribunal/Principal Sub-Judge, Tiruvannamalai.



WEB COPY 2. The case of the claimant / appellant is that on 11.03.2008 at about 07.15 p.m., while the appellant was riding his cycle from Tiruvannamalai to Thandarampet Road near the Church, an auto bearing Regn.No.TN-25-J-4480 belonging to the first respondent driven by its driver in a rash and negligent manner, hit the claimant due to which, she sustained grievous injuries on his forehead, lower lip, tooth, right hand shoulder, right leg bone and injuries all over the body. Claiming that the driver of the auto is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.5,00,000/-

3. The Tribunal, based on the oral and documentary evidences and has observed that the driver of the first respondent is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.53,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant has submitted that



CMA.No.1083 of 2017

the appellant that the Tribunal has not properly considered the injuries sustained by the claimant that she lost four teeth and sustained injuries all over the body. He further submitted that no amount has been awarded under the head of transportation expenses. The injured has taken treatment at Tiruvannamalai Hospital and Chennai and the same was proved through the documents. The Tribunal ought to award some reasonable amount under the head of medical expenses, attender charges and mental agony. It has also failed to consider the loss of amenities and damages to cloth and articles of the injured. The Tribunal ought to award more compensation under the heads of extra nourishment, pain and sufferings, loss of income. He further submitted that the claimant was a vegetable seller and was earning more than Rs.4,000/- per month. The doctor assessed the disability of the appellant as 15% and thereby the Tribunal has awarded a sum of Rs.30,000/- towards disability. He further submitted that PW2/Doctor deposed that the injured has sustained injuries on the forehead, left side of lower lip, upper teeth, right shoulder, right leg fracture and grievous injuries all over the body. The Tribunal has failed to fix the monthly income of the appellant at Rs.3000/-. The award granted by the Tribunal is grossly low, unjust and arbitrary and deserves to be enhanced and in any event, the Tribunal erred in awarding compensation at Rs.53,000/- as against the



claim of Rs.5,00,000/-. Hence, he prays for enhancement of Award amount.

WEB COPY

5. Before the Tribunal, the Appellant/claimant has examined two witnesses and marked PW1 and PW2 and filed seven documents which were marked as Ex.P1 to Ex.P7. On the side of the second respondent/Insurance Company, neither witness was examined nor any document marked.

6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss the petition.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. Based on the evidences of P.W.1 and P.W.2 and perusing the exhibits in Ex.P1, Ex.P3 and Ex.P5, the Tribunal has fastened the liability on the Driver of the auto, which has to be compensated by the second respondent herein.



WEB COPY 9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that she was a vegetable vendor and was earning more than Rs.4000/- per month. The disability of the claimant was rightly assessed as 15% based on cross-examination of PW2/Doctor and Ex.P7 and hence the same is confirmed as such. Insofar as the assessment of disability compensation at Rs.2000/- per percentage is concerned, the same is also a correct assessment.

10. With regard to quantum, the Tribunal has awarded only a sum of Rs.3000/- towards loss of income, taking only one month income of the deceased at Rs.3000/- per month. Considering the socio-economic conditions prevailing in the year 2008, the Tribunal has fixed the income of the appellant as Rs.3000/- per month. This Court is of the considered view that due to the injuries sustained by the appellant and period of treatment given in the hospital, she has lost his earning capacity for nearly three months. Further, her monthly income would be Rs.5000/- and thus awarded Rs.15,000/- towards 'loss of income'. Accordingly, the amount awarded towards loss of income stands modified from Rs.3000/- to Rs.15000/.



CMA.No.1083 of 2017

Further, on perusal of records, it is seen that the Tribunal has not granted compensation under the head of loss of amenities, attender charges and Transport Expenses. Accordingly, a sum of Rs.10,000/-; Rs.5000; and Rs.5,000/- are awarded as compensation to the appellant towards loss of amenities, attender charges and transport expenses respectively.

11. Insofar as the other heads such as pain and sufferings and disability and Extra Nourishment are concerned, the assessment of the compensation awarded by the Tribunal is a just compensation and they do not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	30,000/-	30,000/-
Extra Nourishment	5000/-	5000/-
Loss of income	3000	15,000/-



CMA.No.1083 of 2017

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pain & Sufferings	15000/-	15000/-
Attender Charges	----	5000/-
Loss of amenities	----	10,000/-
Transport Expenses	----	5000/-
Total	53,000/-	85,000/-

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.53,000/- to Rs.85,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.A.C.T.O.P.No.363 of 2008 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the



CMA.No.1083 of 2017

appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

A.A.NAKKIRAN, J

gv

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

No costs.

09.03.2023

Index : Yes/No

Internet : Yes/No

gv

To

1. The Motor Accidents Claims Tribunal,
/Principal Sub-Judge, Tiruvannamalai.

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



WEB COPY



CMA.No.1083 of 2017

CMA.No.1083 of 2017