IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.846 of 2020

Kandhayee (70),
W/o.Varadhan,
D.No.2/14, Arunthathiyar Street,
Narayanampalayam, Morur Post,
Tiruchengode Taluk,
Namakkal District. ... Appellant

Vs.

1. Shanmugavel

2. M/s.Shriram General Insurace Co., Ltd.,
   2nd Floor, Rear Portion, Nagappa Complex,
   Mettupalayam Road,
   Coimbatore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 05.11.2015 made in M.C.O.P.No.162 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For Respondents :
For R2 : Mr.K.Poomalai

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 05.11.2015 made in M.C.O.P.No.162 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge Court, Tiruchengode.

2. The brief facts of the case are as follows:

On 03.02.2014 at about 04.30 P.M., while the appellant was walking on the left side margin of the Sankari – Tiruchengode main road near Narayanampalayam Bus Stop, the vehicle Maruthi Suzuki Omni Car bearing Registration No.TN.34.H.4515 came in a rash and negligent manner and hit the appellant, as a result of which, the appellant sustained fracture in her right hand and sustained grievous injuries all over her body. The appellant was taken to Tiruchengode Government Hospital for treatment and a little later she was shifted to Tirukumaran Hospital, Tiruchengode, where she underwent treatment for a period of one month. The appellant therefore filed the Claim Petition claiming a sum of Rs.15,00,000/- as compensation as against the owner of the offending vehicle viz., the first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent herein.

3. The first respondent/owner of the vehicle filed a counter denying all the allegations raised in the Claim Petition. The first respondent stated that the vehicle was insured by a valid policy vide Policy No.10003/31/14/354576 with M/s.Shriram General Insurance Company Limited, Coimbatore, the second respondent herein and therefore the second respondent as insurer of the offending vehicle was liable to pay the compensation on behalf of the first respondent.

4. The second respondent/Insurance Company filed a counter denying all the averments made in the Claim Petition and further stated that there was a wilful violation of policy condition in that, that the driver of the first respondent vehicle did not possess a valid driving license to drive the transport vehicle at the time of accident. The second respondent/Insurance Company therefore stated that as the first respondent committed breach of the policy condition, the liability was only that of the first respondent/owner of the vehicle. The second respondent denied the age, occupation and monthly income of the appellant and the nature of injuries sustained by her and prayed for dismissal of the Claim Petition.

5. Before the Claims Tribunal, the appellant examined herself as P.W.1 and the Doctor was examined as P.W.2. The appellant filed documents Exs.P1 to P10 in support of her case. The second respondent on the other hand examined R.W.1, the Legal Manager of the second respondent/Insurance Company and further marked Exs.R1 to R3 in support of its case.

6. The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the accident occurred due to the negligence of the driver of the first respondent. The Claims Tribunal further held that as there was a violation of the policy condition by the insured, the second respondent/Insurance Company was liable to pay the compensation to the appellant and to recover the same from the first respondent. The Claims Tribunal assessed the disability at 15% and awarded a sum of Rs.1,41,259/- along with 7.5% interest as compensation.

7. Not satisfied with the amount of compensation awarded by the Tribunal, the appellant has preferred the above appeal.

8. The learned counsel appearing for the appellant submitted that the assessment of disability at 15% fixed by the Tribunal was erroneous inasmuch as the Doctor-P.W.2 had assessed the permanent disability at 50%. According to the learned counsel for the appellant, the appellant had sustained “Fracture both pubic Rami left superior pubic rami right, closed Reduction and shoulder immobilization” and therefore, the assessment of disability at 15% was disproportionate to the nature of injuries sustained by the appellant.

9. The learned counsel for the appellant further submitted that the award of the Tribunal under the various heads like Transport to hospital, Extra nourishment, Medical expenses, Pain and suffering and Permanent Disability was very meager and the same deserved to be enhanced.

10. The learned counsel for the appellant submitted that though claim was made for attender charges, the Tribunal had failed to award any amount towards attender charges.

11. The learned counsel for the second respondent/Insurance Company on the other hand submitted that the Tribunal had assessed the compensation in a fair and reasonable manner and the same should be confirmed.

12. I have heard both the learned counsel for the appellant and the learned counsel for the second respondent. I have also perused the materials available on record.

13. Even though the Doctor had assessed the disability at 50%, the Tribunal had assessed the disability only at 15% on the ground that P.W.2 is not a Doctor who had treated the appellant.

14. In my view, the Tribunal ought to have considered the nature of injuries for assessing the disability. No doubt, it is true that P.W.2 Doctor did not treat the appellant but considering the nature of injuries sustained by the appellant and the disability arising thereof, I am of the view that the permanent disability can be fixed at 20%.

15. The Tribunal adopted the unit method and fixed Rs.2000/- for percentage of disability. As the accident took place in the year 2014, I am of the view that Rs.4,000/- can be fixed for per percentage of disability.

16. Considering the age of the appellant, the period of hospitalization and the two surgeries underwent by the appellant, the compensation awarded under various heads such as Transport to hospital, Extra nourishment, Medical expenses, Pain and suffering and Permanent disability, needs to be revised.

17. The award of the Tribunal is modified as follows:-

Under Column	**Head**	**Amount awarded by the Tribunal**	**Amount awarded by this court**	**Award confirmed or enhanced or reduced or granted or set aside**
21(c)	Transport to hospital	Rs.2,000/-	Rs.10,000/-	Enhanced
21(d)	Extra nourishment	Rs.2,000/-	Rs.12,000/-	Enhanced
21(i)	Medical expenses	Rs.1,05,259/-	Rs.1,05,259/-	Confirmed
21(j)	Pain and suffering	Rs.2,000/-	Rs.25,000/-	Enhanced
21(k)	Permanent disability	Rs.30,000/-	Rs.80,000/-	Enhanced
21(e)	Attender charges	-	Rs.15,000/-	Granted
	Total	**Rs.1,41,259/-**	**Rs.2,47,259/-**	**Enhanced by Rs.1,06,000/-**

18. Thus, the appellant/claimant is entitled to a sum of Rs.1,06,000/- together with interest at the rate of 7.5% per annum.

19. It is submitted by the Counsel for the appellant that the appeal was filed with a delay of 1377 days and this Hon'ble Court at the time of condoning the delay directed that the appellant shall not be entitled to interest for the delay period of 1377 days. It is therefore made clear that the appellant shall not be entitled to interest on the enhanced amount of compensation for the delay period of 1377 days.

20. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,41,259/- to Rs.2,47,259/- (Rs.2,47,259 - Rs.1,41,259 = Rs.1,06,000) which shall carry interest at the rate of 7.5% per annum from the date of numbering of appeal till the date of deposit. The apportionment shall be as ordered by the Tribunal.

(iii) The appellant is directed to pay the Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/Insurance Company is directed to deposit the entire amount modified by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The appellant shall thereafter be entitled to withdraw the entire amount.

06.03.2023

rgm

Index : Yes/No
Neutral Citation : Yes/No

N.MALA, J.

rgm

To:

The Motor Accidents Claims Tribunal,
Subordinate Judge Court, Tiruchengode.

C.M.A.No.846 of 2020

06.03.2023