

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2510 of 2019

Bhuvanewari

Appellant

vs.

1.Mani

2.The United India Insurance Company Ltd.,
104-A, Ranga Building,
Peramanur Main Road,
Four Road,
Salem-636 103.

Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2019 passed in M.C.O.P. No.115 of 2017 on the file of the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondent-1 : No Appearance

For Respondent-2 : Mr.C.Paranthaman

J U D G M E N T

The present Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 18.03.2019 passed in M.C.O.P. No.115 of 2017 on the file of the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Salem.

2. The claimant is the appellant, seeking enhancement of compensation.

3. The accident occurred on 21.02.2017 at about 12.00 Noon at Valasaiyur Main Road, near Periyaveeranam Bus Stop. The Salem City Traffic Investigation Wing Police Station registered a case in Crime No.165 of 2017 under Sections 279, 337 and 338 IPC.

4. The claimant, who is the woman aged about 39 years, sustained grievous injuries resulted in permanent disability. She had

admitted immediately at Government Mohan Kumaramangalam Medical College Hospital, Salem and continued her treatment subsequently at Universal Hospital, Kondalampatty, Salem.

5. The claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/claimant on 21.02.2017 at about 12.00 Noon was standing near Periyaveeranam Bus Stand to catch a bus to go to Salem. At that point of time, the bus belongs to the first respondent came from Valasaiyur to Salem bearing Registration No.TN-54-2233 and the driver had driven the bus in a rash and negligent manner. Near the Bus Stop, the bus hit the appellant/claimant and the appellant/claimant sustained grievous injuries in the back borne of Spinal Cord and sustained fractures. The front portion of the tongue cut and fell down and other serious injuries were sustained by the appellant/claimant.

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6. Perusal of the nature of injuries reveal that the appellant/claimant sustained not only grievous injuries, but resulted permanent

disability and she is continuously taking treatment.

7. The Tribunal with reference to negligence aspect, arrived a conclusion that the bus driver had driven the bus rashly and negligently and caused the accident, resulted grievous injuries to the appellant/claimant.

8. The first respondent/owner of the bus had not appeared before the Tribunal. The second respondent-Insurance Company contested the case. However, the second respondent-Insurance Company could not able to dispute the accident and further not repudiated the fact that the driver of the bus had driven the bus in a rash and negligent manner and caused the accident. Therefore, the Tribunal without any hesitation and based on the documents and evidences, arrived a conclusion that the bus belongs to the first respondent/owner was at fault and the driver of the bus had driven the bus in a rash and negligent manner and hit against the appellant/claimant.

9. As far as the quantum of compensation is concerned, the

Tribunal had elaborately discussed the nature of permanent disability as well as the multiple grievous injuries sustained by the appellant/claimant. The appellant/claimant had taken treatment both as inpatient and as outpatient in the Hospital on several occasions. She had undergone Surgery, which resulted permanent disability. Under those circumstances, the appellant/claimant was directed to appear before the Medical Board of the Government Hospital and the Medical Board examined the appellant/claimant and issued the Disability Certificate, which is marked as Ex.P-15 dated 17.09.2018. The Disability Certificate as well as the X-Ray marked as Ex.P-16 reveal about the nature of injuries and the Tribunal absorbed the same as under:-

“RTA WITH PERINEAL INJURY AND MULTIPLE RIB FRACTURE LEFT SIDE. L3-L4 FRACTURE DISLOCATION WITH CORD COMPRESSION WITH PARAPARESIS” என்று காயத்தின் தன்மை குறித்து தெரிவிக்கப்பட்டுள்ளது. சிகிச்சைக்கு பிறகும் அவரால் முன்போல் நடக்க முடியாத நிலையில் இருப்பதாகவும், நீண்ட நேரம் உட்கார முடியாமல் வலி இருப்பதாகவும் குறிப்பிட்டு அவரை பரிசோதித்த வகையில்

"PARAPARESIS PRESENT WITH BILATERAL FOOT DROP AND BILATERAL EHL ACTIVITY ABSENT BLADDER AND BOWEL-NORMAL AT PRESENT UNABLE TO WALK WITHOUT SUPPORT. PAIN ON SITTING FOR PROLONGED TIME" என்று குறிப்பிட்டு அவர் உடல் முபமைக்கும் 60% நிரந்தர உடல் ஊனம் ஏற்பட்டிருப்பதாக குறிப்பிடப்பட்டுள்ளது. அரசு மருத்துவமனை மருத்துவக் குபவால் வழங்கப்பட்ட ஊனத்தின் அளவு குறித்து இரண்டு தரப்பினர்களும் எந்தவித ஆட்சேபனையும் செய்யவில்லை. முதுகு தண்டு வடத்தில் ஏற்பட்ட எலும்பு முறிவு காரணமாக அங்கு அவருக்கு அறுவை சிகிச்சை செய்யப்பட்டு தகடு திருகாணி பொருத்தப்பட்டுள்ள காரணத்தினாலும் தலையில் இடது பின் பக்க பகுதி, வலது பக்க கண்ணப்பகுதி, இடது பக்க தாடை வரையில் வெட்டுக்காயம் ஏற்பட்டுள்ள நிலையில் நாக்கின் முன் பகுதி காயம் ஏற்பட்டு நாக்கு துண்டிக்கப்பட்ட காரணத்தினாலும், 2 கால்களும் உணர்ச்சியற்ற நிலையில், நடக்க முடியாத நிலையில் இருப்பதனாலும், ஏப்போதும் அவருக்கு உதவி செய்ய ஒரு நபர் தேவைப்படுகின்ற நிலையில்

அரசு மருத்துவமனை மருத்துவக்குழுவால்
வழங்கப்பட்ட 60% உடல் ஊனம் சரியானது
என்று ஏற்றுக் கொள்ளப்படுகிறது."

10. Though the Tribunal had made a finding regarding the nature of grievous injuries sustained as well as the permanent disability caused to the appellant/claimant due to the accident, fixed the monthly income of the appellant/claimant as Rs.4,500/- and accordingly, a sum of Rs.4,86,000/- was granted towards loss of income.

11. The learned counsel appearing on behalf of the appellant/claimant mainly contended that the disability of 60% was assessed by the Competent Medical Board of the Government Hospital and permanent in nature. Therefore, fixation of a sum of Rs.4,500/- towards monthly income is very less and the compensation is to be enhanced.

12. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions of the learned counsel appearing on behalf of the appellant/claimant by stating that the

claimant had not established her income nor produced any documents to establish that she is employed and was earning. The main contention of the second respondent-Insurance Company is that there is no document to prove the employment of the appellant/claimant nor she could able to establish about the monthly income through some documents. In the absence of any such documents and evidences, the Tribunal has fixed the monthly income as Rs.4,500/- and therefore, there is no error and accordingly, the award passed by the Tribunal is to be confirmed and the Civil Miscellaneous Appeal deserves to be dismissed.

13. This Court is of the considered opinion that the first respondent/owner of the bus remained ex parte before the Tribunal. The second respondent-Insurance Company could not able to dispute the accident. The Insurance Company has not disputed the nature of grievous injuries as well as the Disability Certificate issued by the Competent Medical Board of the Government Hospital. Therefore, the accident is not disputed and the permanent disability is also not disputed.

14. Let us now independently look into the nature of permanent disability being suffered by the appellant/claimant. The appellant/claimant was aged about 39 years at the time of accident and undoubtedly, it is a crucial age, which would affect the matrimonial life of the appellant/claimant. She is unable to support the family and the husband and children have to take care of her. Undoubtedly, no document has been produced to establish the employment as well as the income of the appellant/claimant. However, the factual inference is to be drawn in such cases, as a woman at home is the Homemaker and for this purpose, the fixation of income for grant of compensation, assessment can be made considering the appellant/claimant as the Homemaker. It happens the claimants are advised either by the relatives, friends or counsels to say as if they are employed and earning and in order to get compensation, the claimants are ill-advised to provide such facts before the Tribunal in their claim petitions. However, there is no document to establish the employment or income, then it is to be ascertained whether the woman claimant is the Homemaker and in such circumstances, she must be considered as a Homemaker for the purpose of assessing the quantum of compensation. In

the present case, there is no dispute between the parties that the appellant/claimant is a Homemaker and she has got husband and children. Thus, the Tribunal ought to have drawn factual inference in the absence of any material to establish the employment and income.

15. While considering the claimant as the Homemaker, all aspects and factors, family circumstances, living standards of the family and other mitigating factors are to be considered for the purpose of fixing the monthly income of the claimant. Even the status of the family is also to be considered in cases of Homemakers. Fixing a sum of Rs.4,500/- per month towards income for a Homemaker is undoubtedly without any basis and not fixed considering various factors as well as the prevailing situation at the time of accident. The accident occurred on 21.02.2017. Therefore, fixation of Rs.4,500/- as monthly income of the appellant/claimant by the Tribunal is undoubtedly inadequate and improper.

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16. Let us consider the importance of the Homemakers in a family. The value and importance of the Homemakers in a family had never

been undermined by anybody, including the Courts. Performing the job of the Homemaker is a toughest one and the Homemakers are working without any time limits as they are working with love and affection, which can never be expected from an ordinary employee. Therefore, the job of Homemaker can never be compared with employee or employment and the importance and the values are also to be considered by the Courts, while assessing the compensation. The Homemakers are working from early morning till late night and one can experience the hard work being performed by the Homemakers in the houses. The responsibility, performance of job with dedication and with love and affection, involvement regarding the future welfare of the family as well as the members of the family and all can never be undermined and it is to be given due weightage in such cases, where the claimants are Homemakers. Visualising the situation wherein, the Homemakers, in a family, died, the family will become helpless and undoubtedly, the situation would be worsened. Thus, the importance, value as well as the materialistic factors are to be considered, while fixing the compensation as far as the Homemakers are concerned.

17. In Motor Accident Cases, the Tribunals are bound to consider the requirements of fairness. Fairness in granting compensation is of paramount importance. While assessing contributions of the Homemakers to the family, there should be no bias and the importance is to be realised. Fairness is an elusive concept. Ultimately it is grounded in social and moral values. These values or attitudes can be stated. But they cannot be justified or refuted by any objective process of logical reasoning. Moreover, they change from one generation to the next. Therefore, in the present context, there can be different views on the requirements of fairness in any particular case. Implicitly, the Courts must exercise their powers, so as to achieve an outcome which is fair between the parties. But an important aspect of fairness is that like cases should be treated alike.

18. Keeping in view the amount of fairness to be adopted in the cases of Homemakers, we cannot forget that the Homemakers are the Nation Builders. They are the sources for making the family happy and happy family alone can constitute a better society and better society can lead the Nation vibrantly. Thus, the Homemakers are not only contributing to their

family, but they contributing to the development of our Great Nation. It is realistic, if anyone of the earning member died in the family, there will be an impact. But if the Homemaker died, then the impact would be unmeasurable and the family will become scattered. It would be very difficult to cope up the family. Therefore, they are standing in a higher pedestal than that of the earning member in a family. Thus, mitigating factors, family status, income of the husband and other aspects are to be considered while fixing the compensation for Homemakers.

19. Considering the nature of grievous injuries sustained by the appellant/claimant, this Court has no hesitation in arriving a conclusion that the permanent disability caused to the appellant/claimant would affect not only her family life, but also a great loss to the entire family. The family would suffer on account of the permanent disability sustained by the Homemakers. The family is losing her effective contribution to the family. Thus, a pragmatic approach is required to be adopted. However, the Tribunal has not taken these aspects in a right perspective. The Tribunal has adopted a mechanical approach by considering the proof for employment as

well as the income. Such an approach in respect of beneficial legislation like Motor Vehicles Act, is improper. The beneficial legislation is to be interpreted keeping in mind the purpose and object sought to be achieved under the Act. Once the fact of accident is established and the Insurance Policy Coverage is not disputed and negligence is decided, then the claimants are entitled for 'Just Compensation'.

20. The accident occurred during the year 2017 and considering the family status of the claimant as well as the other factors, it would be appropriate if the monthly income of the appellant/claimant is fixed as Rs.9,000/- and accordingly 15 multiplier is to be applied considering the age of the appellant/claimant. Thus, the compensation of Rs.4,86,000/- awarded by the Tribunal towards loss of income is to be modified. This apart, the compensation granted under the head of 'Pain and Sufferings' is also very less, which is to be enhanced as the appellant/claimant has suffered continuously and therefore, the enhancement is to be granted to the appellant/claimant.

21. Accordingly, the total compensation of Rs.8,46,000/- awarded by the Tribunal is modified as detailed hereunder:-

	Rs.
Loss of Income (Rs.9,000/-x12x15x60%)	9,72,000/-
Medical Expenses	3,10,000/-
Pain and Sufferings	1,00,000/-
Transport Expenses	10,000/-
Attender Charges	10,000/-
For Nutrition and other Nourishment Expenses	5,000/-
Total	Rs14,07,000/-

सत्यमेव जयते

Thus, the appellant-claimant is entitled to get the total compensation of Rs.14,07,000/- along with interest at the rate of 7.5% per annum.

22. The second respondent-Insurance Company is directed to

deposit the modified compensation amount of Rs.14,07,000/- along with interest at the rate of 7.5% per annum, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, being made, the appellant-claimant is permitted to withdraw the entire modified award amount by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

23. Accordingly, the judgment and decree dated 18.03.2019 passed in M.C.O.P. No.115 of 2017 on the file of the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Salem stands modified to the above extent and consequently, the C.M.A.No.2510 of 2019 stands allowed in part. However, there shall be no order as to costs.

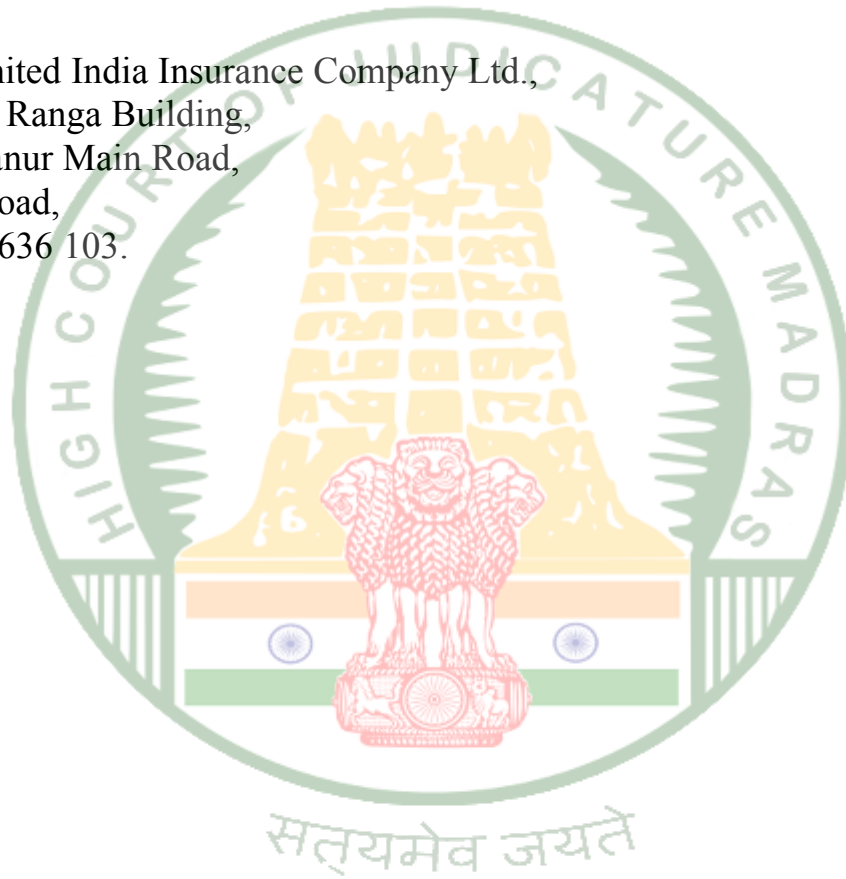
01-09-2020

Index : Yes/No.
Internet: Yes/No.
Speaking Order/Non-Speaking Order
Svn

To

1.The Chief Judicial Magistrate,
Chief Judicial Magistrate Court-cum-Motor Accidents Claims
Tribunal,
Salem.

2.The United India Insurance Company Ltd.,
104-A, Ranga Building,
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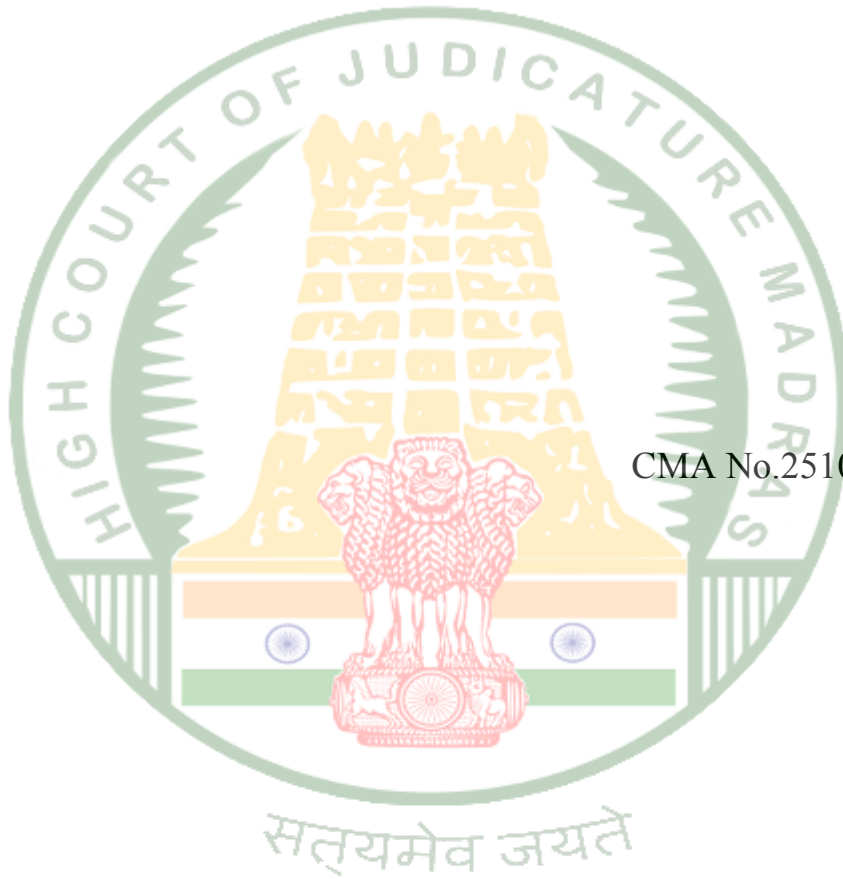


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S.M.SUBRAMANIAM, J.

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