
(2006) 06 MAD CK 0308
In the Madras High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Jesu Mari and Others

RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Citation : (2006) 3 ACC 464

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Judgement

R. Sudhakar, J.—This present appeal has been filed against the order dated 7.10.1998 in M.A.C.T.O.P. No. 38 of 1998 on the file of the Motor Accident Claims Tribunal, Pondicherry at Karaikal, by the appellant/claimant seeking enhancement of compensation awarded by the Tribunal.

2. The case of the appellant/claimant is that by the rash and negligent act of the driver of the scooter bearing Registration No. TN-50/2094, the appellant/claimant fell down, while she was walking and sustained multiple injuries. She was treated in the General Hospital, Karaikal. Case was registered in Crime No. 6 of 1998 under Sections 279 and 338, I.P.C. by the Traffic Police, Karaikal. The further case of the appellant/claimant is that she is a hawker earning a sum of Rs. 50 to Rs. 60 per day. A sum of Rs. 2,00,000 is claimed as compensation.

3. The Tribunal, relying upon Ex. A-1 copy of FIR, Ex. A-3 copy of Accident Inspection Report and other documents, came to the conclusion that the driver of the scooter had caused the accident due to rash and negligent driving and answered the point No. 1 in favour of the appellant/claimant.

4. As regards the point No. 2, the Tribunal relied on Ex. A-9 disability certificate whereunder the claimant had suffered permanent disability to the extent of 38.4%. Besides, it is also to be noted that the claimant had sustained fracture of both bones of left leg with 50% loss of left hip flexion and 30% loss of left knee flexion and, therefore, it was found that squatting was difficult and in addition to this, the claimant also suffered 1 1/2 inches shortening of left lower limb.

Therefore, it was concluded that the claimant had suffered permanent disability to the extent of 38.4%. However, while granting compensation, the Tribunal has taken into consideration that for any permanent disability, the minimum amount provided is Rs. 25,000 and, therefore, the Tribunal awarded a sum of Rs. 30,000 as total compensation. No amount was granted under any other head. Not satisfied with the quantum of compensation, the claimant has preferred this appeal.

5. It is not mandatory that in each and every case of permanent disability, only the minimum amount of compensation should be provided. The minimum amount of compensation is a benchmark, while considering the case of compensation for permanent disability. Further, depending upon the facts and circumstances of each case, the quantum of compensation should be determined proportionate to the percentage of disability. In this case, the claimant has suffered 38.4% disability and, therefore, it will appropriate if the amount of compensation is fixed on account of disability at Rs. 40,000.

6. Even though the claimant has sought for compensation under the heads, viz., medical expenses, extra nourishment, pain and suffering and continuing pain and suffering, no amount has been granted by the Tribunal. The claimant is a street hawker and admittedly she has been earning Rs. 50 to Rs. 60 per day. Considering the fact that the claimant was hospitalised due to fracture, she would have been incapacitated and, consequently, there would be loss of income during the period of treatment.

7. Taking into consideration, the disability and the facts and circumstances of the case and also the fact that no appeal has been filed by the respondents, the interest of justice requires the amounts shall be awarded as follows:

Compensation	now	Head granted
Transport and medical expenses Rs. 5,000	Extra nourishment Rs. 2,500	Pain and suffering Rs. 5,000
Continuing pain and suffering Rs. 5,000	Loss of income Rs.	5,000

Accordingly, the total compensation payable to the claimant is enhanced from Rs. 30,000 to a sum of Rs. 62,500. The claimant is entitled to interest at 7.5% per annum on the enhanced compensation amount from the date of claim petition till date of payment.

8. In the result, the appeal is partly allowed, modifying the award amount to Rs. 62,500 with interest at 7.5% per annum only on the enhanced compensation amount of Rs. 32,500 from the date of claim petition till date of payment. No costs.