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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2688 of 2009

T.Geetha (minor) rep. by
father &

N.F.P.

Thanigaivel

...Appellant/Petitioner

Vs

1.B.K.Koteeswaran

2.The Oriental Insurance Co. Ltd.,
Motor Third Party Cell,
No.8, Esplanade,
UIL Building,
Madras - 108.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13/3/2000 made in MACT.O.P.No.3833/1996 on the file of the VI Court of Small Causes (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.N.M.Muthurajan

For Respondents : R1 - Exparte
Mr.J.Chandran for R2

J U D G M E N T

The instant appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 13.3.2000, passed in M.A.C.T.O.P.No.3833 of 1996, on the file of the VI Court of Small Causes (Motor Accident Claims Tribunal), Chennai.



2.The brief facts leading to the filing of the instant appeal are as follows:-

(i)The Appellant sustained injuries on 24.12.1995 as a result of an accident caused by a Motor Cycle bearing Registration No.TN-22-Y-5790 owned by the first respondent and insured with the second respondent.

(ii)The Appellant preferred a claim through her father Mr.P.Thanigaivel as she was a minor on the date of the claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.3833 of 1996.

(iii)The Motor Accident Claims Tribunal by its Award dated 13.03.2000, directed the second respondent to pay the Appellant a sum of Rs.1,70,165/- together with interest at the rate of 12% per annum from the date of claim till the date of realization.

3.Aggrieved by the quantum of compensation awarded by the Tribunal, the instant appeal has been filed seeking enhancement of compensation.

4.Heard, Mr.N.M.Muthurajan, learned Counsel for the Appellant and Mr.J.Chandran, learned Counsel for the second respondent

5.According to the learned Counsel for the Appellant, the Tribunal has not adequately compensated the Appellant. According to him, she was a minor aged nine years at the time of accident i.e., on 24.12.1995. According to him, the Appellant had sustained brain injury, loss of speech, lower limbs paralyzed, suffered crush injury in right ankle, left hand was crippled and multiple injuries all over the body. According to him, due to the injuries sustained by the Appellant she also suffered loss of marital prospects. According to him, even though, 75% disability was assessed by the Doctor and a disability certificate which was marked as Ex.P7 was produced, the Tribunal has erroneously awarded a meagre compensation towards disability.

6.Further, learned counsel for the Appellant would contend that the compensation awarded by the Tribunal towards pain and suffering at Rs.10,000 is very low, considering the nature of the injuries sustained by the Appellant.

7.Further, learned Counsel for the Appellant would submit that the Tribunal has not awarded compensation towards attender charges. Excepting for these grounds, the Appellant has not the questioned assessment of compensation towards other heads awarded by the Tribunal under the impugned Award.



8.Per contra, learned Counsel for the second respondent Insurance Company would submit that the accident happened in the year 1995 and the Award was passed in the year 2000 and the appeal was numbered in the year 2009. According to him, considering the nature of injuries sustained by the Appellant and the year of the accident, the Appellant has been adequately compensated by the Tribunal under the impugned Award.

9.While the matter came up for the hearing on 06.09.2018, this Court directed the Appellant to be personally present before this Court. As directed by this Court, the Appellant was personally present before this Court. On questioning, she has confirmed that she has already got married ten years back. Under the impugned Award, the Tribunal has awarded a compensation of Rs.1,00,000/- towards loss of marital prospects. The said fact was not disclosed by the Appellant while filing the instant appeal before this Court. Only after this Court directed the Appellant to be personally present before this Court, this fact was brought to the knowledge of this Court today. The Appellant has approached this Court with unclean hands by suppressing the fact that she has already got married.

10.This Court has to Award just compensation to the victim of the motor accident case. The Appellant has not been able to give proper answers for the questions raised by this Court and she looks to be hale and healthy and she was able to stand and give answers to the questions raised by this Court. Further, the accident happened in the year 1995 and there was negligence on the part of the Appellant to prosecute the appeal filed before this Court. The appeal even though was filed in the year 2001, which was numbered by the Registry only in the year 2009.

11.According to the learned Counsel for the Appellant, there was a delay of 56 days in filing the appeal. If the Appellant was vigilant, she could have processed the appeal and got it numbered by the Registry at the earliest point of time. The accident happened in the year 1995 and the claim was made in the year 1996 before the Tribunal and the Award was passed on 13.03.2000. The Tribunal has also awarded 12% interest per annum in favour of the Appellant. The Appellant enjoyed the benefit of 12% per annum together with interest from the date of claim i.e., on 06.03.1996 till the date of deposit. The Tribunal has given a clear finding that the Appellant has not suffered 75% disability as given by the Doctor as per Ex.P7. After personally seeing the Appellant, this Court is also in agreement with the finding given by the Tribunal. The Appellant has also not informed this Court about she having got married during the pendency of this appeal. Even though, she has got married, the compensation of Rs.1,00,000/- was awarded by the Tribunal towards loss of marital prospects. Further, the



injuries sustained by the Appellant, have admittedly, not caused any injury to the reproductive organs of the Appellant. Considering all these factors, the Appellant has not made out any ground for interference by this Court in this Appeal. Accordingly, the Appeal shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The VI Judge,
The VI Court of Small Causes
(Motor Accidents Claims Tribunal), Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.M.Muthurajan, Advocate Sr.65642

C.M.A.No.2688 of 2009

ev[co]
srg 29/10/2018