

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2714 of 2015

Amudha .. Appellant/Petitioner

Vs.

1.Natarajan

2.The Divisional Manager,
The National Insurance Co. Ltd.,
19, Officers Line, Vellore. .. Respondents / Respondents
(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.03.2010 made in M.C.O.P.No.648 of 2006, on the file of the Additional Subordinate Judge, (Motor Accidents Claims Tribunal), Thiruvannamalai.

For Appellant : Ms.M.Malar

For R2 : Ms.N.B.Surekha

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 11.03.2010 made in M.C.O.P.No.648 of 2006, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Thiruvannamalai.

2.The appellant is the claimant in M.C.O.P.No.648 of 2006, on the file of the Additional Sub Court, (Motor Accidents Claims Tribunal), Thiruvannamalai. She filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.10.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the driver of the auto belonging to the 1st respondent is responsible for the accident and directed the respondents to pay the compensation of a sum of Rs.70,000/- to the appellant, jointly and severally.

4. Not being satisfied with the award granted by the Tribunal, the appellant has come out with this appeal, seeking enhancement of the same.

5. The learned counsel appearing for the appellant contended that the appellant examined P.W.2 Doctor and proved the percentage of disability. The Tribunal without any basis reduced the percentage of disability. The amount of Rs.45,000/- granted by the Tribunal for permanent disability and the amounts awarded under different heads are very meager and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that the Tribunal considering the materials on record, by giving reason, has reduced the percentage of disability to 25% from 30%. But, awarded excessive amount of Rs.45,000/- as compensation. The nature of injuries and treatment taken by the appellant was considered in detail and the compensation awarded by the Tribunal is not meager and there is no necessity to enhance the amounts and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials on record.

8. From the materials on record, it is seen that P.W.2 Doctor has certified that the appellant suffered 30% of disability. The Tribunal considering the evidence of P.W.2, came to the conclusion that the percentage of disability certified by P.W.2 Doctor is excessive. The Tribunal independently considering the Accident Register, disability certificate, X-ray and evidence of P.W.2, held that the percentage of disability is 25% and awarded Rs.45,000/- towards permanent disability. The Tribunal has given valid reason for reducing the percentage of disability to 25% and awarding Rs.45,000/-. There is no error in the said reasoning. A sum of Rs.2,000/- granted by the Tribunal for extra nourishment is meager. Considering the nature of treatment taken by the appellant, the appellant is entitled for a sum of Rs.5,000/- towards extra nourishment. The amounts granted by the Tribunal in all other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	45,000/-	45,000/-	confirmed
2.	Transport charges	2,000/-	2,000/-	confirmed
3.	Extra nourishment	2,000/-	5,000/-	enhanced
4.	Attender charges	2,000/-	2,000/-	confirmed
5.	Loss of income during treatment period	9,000/-	9,000/-	confirmed
6.	Mental agony	10,000/-	10,000/-	confirmed
	Total	70,000/-	73,000/-	Enhanced by Rs.3,000/-

9. With the above modification, this appeal is partly allowed. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.73,000/- with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

gsa
To

Sub Assistant Registrar

1) The Additional Subordinate Judge,
(Motor Accidents Claims Tribunal), Thiruvannamalai.

+1 cc to M/s.N.B.Surekha, Advocate, S.R.No.82872
+1 cc to M/s.M.Malar, Advocate, S.R.No.83188

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GJ-II(CO)
SSM(25/03/2019).