

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3540 of 2017
and C.M.P.No.22780 of 2017
and C.M.A.No.1662 of 2017

C.M.A.No.3540 of 2017:-

M/s.Reliance General Insurance
Co.Ltd.,
No.66, Haddows Road,
Chennai-600 006

..Appellant/Respondent-2
in Trial Court

Vs

1.A.Athiya Mubeen
2.Shanthi.D

..Respondents/1st Petitioner
and 1st Respondent

C.M.A.No.1662 of 2017:-

A.Athiya Mubeen

..Appellant/Petitioner

Vs

1.Shanthi.D.

2.Reliance General Insurance Co.Ltd.,
Reliance House, No.66, Haddows Road
Chennai-600 006

..Respondents/Respondents in
Trial Court

Civil Miscellaneous Appeals filed against the judgment and
decree dated 01.03.2017 passed in M.C.O.P.No.3006 of 2015 by the
Motor Accident Claims Tribunal (In the II court of Small Causes,
Chennai).

For appellant in CMA.3540/2017 : : Mr.S.Arun Kumar

For Respondents :
for R1 in CMA.3540/2017 : Mr.K.Suryanarayanan
R2 : Exparte
For appellant in CMA.1662 of 2017 :: Mr.K.Suryanarayanan
For R2 in CMA.1662 of 2017 :: Mr.S.Arun Kumar
R1 : Exparte

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed challenging the judgment and decree dated 01.03.2017 passed in M.C.O.P.No.3006 of 2015 by the Motor Accident Claims Tribunal (In the II court of Small Causes, Chennai).

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioner before the Tribunal as per her claim petition is that on 22.02.2015 at about 17.30 hours, while she was riding Scooty Pep bearing Reg.No.TN 09 J 2382 at Hasthinapuram, Gayathri Nagar, a tempo traveller bearing Reg.No.TN-11-Y 0436 driven by its driver in a rash and negligent manner, hit the petitioner. The petitioner sustained grievous injuries in the said accident. Hence, she claimed compensation of Rs.10,00,000/-.

3. On the other hand, the 2nd respondent/Insurance Company opposed the petitioner's claim by filing a detailed counter. The 2nd respondent stated that the amount claimed is highly excessive for the alleged injuries and also denied the validity of vehicle records, driving license and the insurance coverage and pleaded for dismissal of the petition.

4. To substantiate the claim before the Tribunal, the petitioner examined P.W.1 and P.W.2 and produced Exhibits P.1 to P.9. The 2nd respondent/Insurance Company, neither examined any witness nor produced any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.2,10,000/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the offending vehicle driver and the petitioner sustained grievous injuries due to the same and the 2nd respondent being the insurer of the offending vehicle is liable to pay compensation to the petitioner. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1.	Transportation, nourish food and miscellaneous expenditure	Rs.25,000/-
2	Medical expenses	Rs.7,200/-
3	Attender charges	Rs. 10,000/-
4	Damages for pain, suffering and trauma	Rs. 25,000/-
5	disability	Rs.1,05,000/-
6	Loss of earning during the period of treatment	Rs.13,000/-
7	Loss of amenities	Rs.25,000/-
	Total	Rs.2,10,200/- rounded off to Rs.2,10,000/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the 2nd respondent/Insurance Company has filed C.M.A.No.3540 of 2017 and the petitioner/claimant filed C.M.A.No.1662 of 2017.

7. According to the 2nd respondent/Insurance Company, the Tribunal failed to note that the correct driver was not impleaded to question the breach of policy condition. It is further averred that the reasons assigned by the Claims Tribunal in support of the award are untenable. Hence, the 2nd respondent/Insurance Company seeks to entertain their appeal.

8. On the other hand, the learned counsel for the Petitioner/claimant has contended that the Tribunal has properly appreciated the evidence. He further contended that the finding of the Tribunal that the accident occurred only due to rash and negligent driving of the driver of the offending vehicle is based on Ex.P.1-FIR registered in Crime No.141/2013 on the file of S-13 Chrompet Police Station. The learned counsel for the Petitioner/claimant contended that the award of the Tribunal is very meagre and sought for enhancement of the compensation.

9. Heard both sides and perused the materials available on record. On a perusal of the materials available on record, it is seen that the Tribunal has fixed 35% disability and awarded Rs.1,05,000/- towards "loss of earning capacity". Taking into consideration the nature and gravity of the injuries sustained by the petitioner and her evidence that she sustained fracture of both bones in left forearm and there is restricted movement of forearm and due to muscle fibrosis, she is suffering from permanent disability of both physical and functional, this court is of the considered opinion that a higher calculation should have been arrived at while granting compensation under the head

"loss of earning capacity". However, the Tribunal failed to do so. In such circumstances, taking into account the fact that definitely the petitioner's income would have been affected due to the injury suffered by her and her future prospects stirred, this court is inclined to calculate the compensation under the head "loss of earning capacity/disablement compensation" as under:-

$\text{Rs.}6500 \times 12 \times 15\% \times 17 = \text{Rs.}1,98,900/-$.

Except the above modification, the compensation granted by the Tribunal on the other heads are just and proper and the same are confirmed.

10. In the light of the foregoing discussion, the award passed by the Tribunal is modified as shown below:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1.	Transportation, nourish food and miscellaneous expenditure	Rs.25,000/-	Rs.25,000/-
2	Medical expenses	Rs.7,200/-	Rs.7,200/-
3	Attender charges	Rs.10,000/-	Rs.10,000/-
4	Damages for pain, suffering and trauma	Rs.25,000/-	Rs.25,000/-
5	Disability/Loss of earning capacity/disablement compensation.	Rs.1,05,000/-	1,98,900/-
6	Loss of earning during the period of treatment	Rs.13,000/-	Rs.13,000/-
7	Loss of amenities	Rs.25,000/-	Rs.25,000/-
	Total	Rs.2,10,200/- rounded off to Rs.2,10,000/-	Rs.3,04,100/-

In the result, C.M.A.No.3540 of 2017 filed by Insurance Company is dismissed; C.M.A.No.1662 of 2017 filed by the petitioner/claimant is allowed on the terms as stated infra:-

- (1) The award granted by the Tribunal is enhanced to Rs.3,04,100/- from Rs.2,10,000/-
- (2) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (3) The Insurance Company is directed to deposit the entire modified award amount with proportionate interest and costs, within a period of six weeks from the date of receipt of a copy of this order.
- (4) The petitioner/claimant is directed to pay the required

court fee as per the modified award amount while receiving the copy of the order of this court.

(5) The Petitioner/claimant is permitted to withdraw the award amount as ordered by this court, with accrued interest, before the Tribunal, by filing necessary application, less the amount if any already withdrawn by her.

(6) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To
1.The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court, Chennai.

copy to

1.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.K.Suryanarayanan Advocate sr 2769
+1 cc to Mr.S.Arunkumar Advocate sr 3821

C.M.A.Nos.3540 of 2017
and 1662 of 2017

ssd(co)
aa12/03/2018

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