

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2504 of 2018

K.KalaiMathi

.. Appellant / Petitioner

Vs.

1. K.Pandi Meena

2. United India Insurance Co. Ltd.,
Third Party Hub, Silingi Building,
No.134, Greams Road,
Murugesanaiker Street,
Chennai - 600 006.

.. Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 31.10.2017 made in M.C.O.P.No.2454 of 2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.S.Ramachandran

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 31.10.2017 made in M.C.O.P.No.2454 of 2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2454 of 2011 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The appellant filed the above claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.11.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the two wheeler/first respondent and directed the second respondent as insurer to pay a sum of Rs.75,000/- as compensation to the appellant.

4. Not being satisfied with the award amount granted by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that P.W.2/Doctor has certified the disability of the appellant at 60.4% and the Tribunal on erroneous consideration reduced the same to 18%. The appellant is entitled to compensation for 60.4% disability. The amounts awarded by the Tribunal under the different heads are meager and the same has to be enhanced and prayed for enhancement of compensation.

6. Though notice was served on the second respondent/Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. From the materials on record, it is seen that the appellant examined the Doctor as P.W.2 and produced the disability certificate Ex.P11. The Tribunal considering the evidence of Doctor and disability certificate, has taken note of the fact that the appellant did not suffer injury to eye or ear and rejected the disability certificate issued by the Doctor. The Tribunal after verifying the discharge summary in respect of the disability fixed at 18% with regard to fracture in the knee joint and dislocation of shoulder, reduced the same to 13% on the ground that it can be cured by way of physiotherapy. The percentage of disability fixed by the Tribunal is too low and the same is enhanced to 30%. Therefore, the appellant is entitled to a sum of Rs.90,000/- towards disability (3000 X 30%). The appellant was admitted as an in-patient in the hospital from 17.11.2010 to 04.01.2011. The amounts awarded by the Tribunal towards attendant charges, extra nourishment and loss of income are meagre and the same are enhanced to Rs.10,000/-, Rs.10,000/- and Rs.30,000/- (loss of income for five months (6000 X 5), respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same 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.	Medical bills	1,500	1,500	confirmed
2.	Disability	39,000	90,000	enhanced

3.	Attendant charges	2,000	10,000	enhanced
4.	Loss of income	12,000	30,000	enhanced
5.	Pain and suffering	10,000	10,000	confirmed
6.	Transportation	5,000	5,000	confirmed
7.	Extra nourishment	5,000	10,000	Enhanced
	Total	74,500 rounded off to 75,000	1,56,500 rounded off to 1,57,000	Enhanced to Rs.82,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.75,000/- is hereby enhanced to Rs.1,57,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

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Sub Assistant Registrar

To

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

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.S.Ramachandran, Advocate, S.R.No.83952

C.M.A.No.2504 of 2018

BJ(CO)
SSM(04/07/2019)