

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.1189 OF 2013

H.Chitra

...Appellant/Petitioner

.Vs.

1.J.Jaya Prasanna

2.ICICI Lombard General Insurance Co. Ltd.,
Arihant Plaza, No.84/85, Walltax Road,
Chennai 600 003.

...Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 09.01.2013 passed in MCOP.No.729 of 2012 on the file of the III Judge, Motor Accident Claims Tribunal(Court of small causes), Chennai.

For Appellant : Mrs.P.T.Salim Fathima

For Respondent-2: Mrs.R.Sreevidhya

JUDGMENT

The appellant is the claimant in MCOP.No.729 of 2009 on the file of the Motor Accident Claims Tribunal / III Judge, Court of small causes, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award a compensation of Rs.11,00,000/- for the injuries sustained by her in a road accident on 28.12.2011.

2. The case of the claimant in nutshell is as follows:

On 28.12.2011, the claimant was as a pillion rider in TVS XL Moped bearing Registration No.TN-09-AP-5495 and she was proceeding towards T.Nagar from North Usman Road and when the rider of the two wheeler took a U turn near Joyalukkas shop, a speeding car bearing Registration No.TN.02-AQ-3101 hit the two

wheeler, as a result of which she fell down and sustained injuries.

3. According to the claimant, the rash and negligent driving of the rider of the car bearing Registration No. TN.02-AQ-3101 belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent/ICICI Lombard General Insurance Co. Ltd., the owner and the insurer are liable to pay compensation.

4. The owner of the car remained absent before the Tribunal and therefore, she was set ex-parte. The Insurance Company contested the claim petition. The learned III Judge, Court of small causes, Chennai, awarded a sum of Rs.11,00,000/- as compensation with interest at the rate of 7.5% p.a to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mrs.P.T.Salim Fathima, learned counsel appearing for the appellant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. Mrs.P.T.Salim Fathima, learned counsel appearing for the appellant contended that though Dr.Amarnath Sowlee(P.W.2) assessed the partial permanent disability at 20%, the Tribunal without assigning any reason reduced the same as 15% and awarded a meagre amount under the head partial permanent disability.

7.Mrs.R.Sreevidhya, learned counsel appearing for the Insurance Company contended that the Tribunal after considering all the aspects of the case has awarded just compensation and prayed for dismissal of the case.

8. No representation on behalf of the first respondent.

9. A perusal of the Discharge summary issued by SRM Hospital (Ex.2) shows that the claimant had sustained right TA cut with laceration and she took treatment in the Hospital from 28.12.2011 to 31.12.2011. Dr.Amarnath Sowlee(P.W.2) had assessed the partial permanent disability as 20%. As rightly contended by the learned counsel appearing for the claimant, the Tribunal reduced the same to 15% without assigning any valid reason. Considering the nature of injuries sustained by the claimant, the partial permanent disability is fixed as 20%, as assessed by Dr.Amarnath Sowlee(PW2) and a sum of Rs.2,000/- per percentage of disability is awarded.

10. In the claim petition, it is contended that the claimant was 29 years on the date of accident and she was self employed, earning a sum of Rs.12,000/- to 15,000/- per month and the Tribunal has fixed the notional monthly income of the injured as Rs.4,500/- per month, in the absence of proof to show the actual income of the injured. The notional income is fixed as Rs.6,000/- per month, since the accident took place in the year 2011. On account of the accident, the claimant would not have been in a position to attend to his regular work for atleast three months and therefore, a sum of Rs.18,000/- (Rs.6,000/- X 3 months) is awarded towards loss of income.

11. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of income	Rs. 18,000/-
2.	Transportation	Rs. 2,000/-
3.	Extra nourishment	Rs. 5,000/-
4.	Damage to clothing	Rs. 500/-
5.	Medical Expenses	Rs. 74,900/-
6.	Pain and sufferings	Rs. 10,000/-
7.	Attendant charges	Rs. 2,000/-
8.	Partial Permanent disability	Rs. 40,000/-
Total		Rs.1,52,400/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,32,900/- to Rs.1,52,400/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,32,900/- to Rs.1,52,400/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent/National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.1,52,400/- (less the amount already deposited) together

with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.792 of 2012 on the file of the Motor Accident Claims Tribunal/III Court of small causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

smn

To

The Motor Accidents Claims Tribunal,
III Judge, Motor Accident Claims Tribunal
(Court of small causes), Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.M.Swamikkannu, Advocate, S.R.No.90015
+lcc to Mrs.R.Sreevidhya, Advocate, S.R.No.90067

CMA.No.1189 of 2013

BS (CO)
CS/05/10/2020

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