

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2169 of 2010

Rajeswari

... Appellant /Petitioner

Versus

1.D.Rajendran

2.The New India Assurance Co.Ltd.,
No.45, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2008 made in M.C.O.P.No.4896 of 2002 on the file of the Motor Accident Claims Tribunal, Additional Sessions Judge, Fast Track Court No.IV, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : No Appearance - R1
: Mrs.A.Solomi (for R2)

This Civil Miscellaneous Appeal has been filed against the Order and Decree 12.12.2008 made in M.C.O.P.No.4896 of 2002 on the file of the Motor Accident Claims Tribunal, Additional Sessions Judge, Fast Track Court No.IV, Chennai.

2.It is the case of the claimant, on 08.03.2001, at about 8.30 am, he was riding Kinetic Honda bearing Reg.No.TN-22-M-2248 near GST Road at Tambaram from North to South, while he tried to take 'U' turn, a lorry bearing Regn.No.TSB-9079, which was driven by its driver in a rash and negligent manner, dashed against the claimant's motorcycle, as a result of which he sustained grievous injuries. According to the claimant, due to rash and negligent driving of the driver of the lorry the accident occurred and the first respondent being the owner of the offending vehicle and the second respondent herein/Insurance company is the insurer of the vehicle are jointly and severally

liable to pay a compensation to him. Therefore, the claimant filed the claim petition, claiming a sum of Rs.6 Lakhs as compensation.

3.The second respondent/Insurance company has filed a detailed counter statement, denying the manner of accident and also raised the ground of negligence on the part of the driver of the motorcycle and also denied the averments made by the claimant in the claim petition. Therefore, the Insurance company cannot be fastened with any liability. Thus, the Insurance company prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, three witnesses were examined as PW.1 to PW.3 and nine documents were marked as Exs.P1 to P9. On the respondents side, neither oral nor documentary evidence was adduced.

5.After going through the evidence, the Tribunal awarded a sum of Rs.2,25,030/- as compensation to the claimant. Not being satisfied with the award of the Tribunal, the claimant has come up with the present appeal for enhancement of compensation.

6.The learned counsel appearing for the appellant/claimant has stated that she has sustained abrasion over face, laceration over lower lip, abrasion over right knee and abdomen, lacerated injury over right thigh extending to back and below right knee, degloving injury back and lower abdomen (38 cm) upto vagina. For these disabilities, the Doctor/PW.2 assessed her disabilities at 25%. Furthermore, he would contend that for the Injuries on left ankle and towards shortening of 10 degree of ankle, the Doctor/PW.2 assessed her disability at 10% and assessed 25% towards the injuries sustained in perineal tear involving anus. Totally, the Doctor had assessed the claimant's disability at 60%, but, the Tribunal failed to consider the evidence of PW.2/Doctor and erred in fixing the disability at 30% and arrived meagre amount towards disability.

7.I have heard the learned counsel appearing for the respective parties and perused the materials available on record.

8.With regard to the disability, Ex.P3/Discharge summary, Ex.P4/Medical Bills, Ex.P8/Photo with negative series and Ex.P9/disability certificate, issued by the Dr.Thiyagarajan/PW.2, were marked on the side of the claimant, which would show that the disability at 60% was partial permanent disability. But, the Tribunal without properly appreciating the said evidence, has wrongly fixed the disability at 30% to the claimant.

9.This Court, considering the nature of the injuries sustained by the claimant in the said accident feels, to re-assess the disability at 50%. Accordingly, the compensation of Rs.60,000/- is enhanced to Rs.1,00,000/- under the head of disability. That apart, a sum of Rs.2,000/- awarded by the Tribunal under the head of Transport charges is hereby enhanced to Rs.5,000/-.

10.However, the Tribunal did not award any amount towards loss of earning. As per Ex.P7/Salary Certificate, this Court fix the claimant's monthly income as Rs.4,000. Taking note of her injuries, it would take atleast three months to recover. Hence, for loss of earning for three months, this Court awards a sum of Rs.12,000/- (Rs.4000 x 3). Apart from that, a sum of Rs.10,000/- is awarded towards Attender charges as compensation to the claimant to meet the ends of justice. .However, the compensation amounts awarded by the Tribunal under the heads of Pain and Sufferring, Nutritious diet expenditure, Medical expenditure, Damage Cloth and Loss of Amenity are just and reasonable and the same are hereby confirmed. In view of the above findings, the award of the Tribunal is modified and enhanced as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.60,000/-	Rs.1,00,000/-
Grievous injury and for Pain and Sufferring, Mental agony, accident shock	Rs.40,000/-	Rs.40,000/-
Nutritious Diet Expenditure	Rs.5,000/-	Rs.5,000/-
Transport Expenditure	Rs.2,000/-	Rs.5,000/-
Damaged cloth	Rs.1,000/-	Rs.1,000/-
Medical Expenditure	Rs.1,07,030/-	Rs.1,07,030/-
Loss of Amenity	Rs.10,000/-	Rs.10,000/-
Attender charges	-	Rs.10,000/-
Loss of earning	-	Rs.12,000/-
Total	Rs.2,25,030/-	Rs.2,90,030/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed.

(i) The compensation amount of Rs.2,25,030/- awarded by the Tribunal is hereby enhanced to Rs.2,90,030/-, along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) This Court directs the Insurance Company to deposit

the compensation amount, as ordered by this Court, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) Interest at the rate of 7.5% with regard to the enhancement of amount shall accordingly be calculated for payment.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest.

(v) The appellant/claimant is directed to pay additional Court fee for the enhanced amount. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

klt

To

- 1.The Motor Accident Claims Tribunal,
Additional Sessions Judge, Fast Track Court No.IV, Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.A.Shanmugaraj Advocate sr42665
+1 cc to Mr.C.Ramesh Babu Advocate sr 42665

CMA.No.2169 of 2010

mp(co)
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