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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.2481 of 2011

Premavathi

...Appellant/Petitioner

Vs.

1.V. Devendraprabhu

2. The New India Assurance Co Ltd.,
Divisional Office, Premier Complex,
Yercaud main Road, 5 roads, Salem -16.

3. S. Selladurai [Given up]

4. National Insurance Co Ltd.,
Divisional Office, Balaji Tower,
No.11, Ramakrishna Road,
Salem -7. [Given up] ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.1949 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional District Judge, (Fast Track Court No.1, Salem) dated 15.06.2010 by enhancing the compensation amount.

For Appellant : Mr.C. Kulanthaivel
For Respondents : Mr.P. Kandasamy for R2
R1 - Ex-parte
R3 and R4 Given up

JUDGMENT

The appellant is the claimant in M.C.O.P.No.1949 of 2005, on the file of the Motor Accident Claims Tribunal-cum Additional District Judge, Fast Track Court No.1, Salem. She has filed the above said claim petition, seeking enhancement of compensation awarded by the Tribunal.



2. The brief facts, which are necessary for disposal of the appeal, are as follows:-

On 17.09.2005, the claimant was returning to Salem in an ambassador car bearing Registration No.TN-30-X-572 after attending a marriage function in Chennai. She has travelled along with her husband, son, daughter-in-law and two grand children. When the ambassador car was going in Salem to Attur Main Road, near Kothambady Geethalaya Kalyanamandabam, one Eicher Tempo bearing Registration No.TN-74-D-7089, which came in the opposite direction in a rash and negligent manner without giving any horn sound and signal, dashed against the ambassador car. In the above said accident, the claimant has sustained fracture in right side thigh bone, dislocation in left side thigh bone, cut injury in center side of the forehead and sutures applied, cut injury in right side and left side leg knee, lacerated injuries all over the body. Hence, for the injuries sustained by her, she has filed the above claim petition before the Tribunal claiming a sum of Rs.6,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, five witnesses were examined as P.Ws.1 to 5 and 27 documents were marked as Exs.P.1 to P.27. On the side of the respondents before the Tribunal, no witnesses were examined and no documents were marked. But one Court Exhibit was marked as Ex.C.1.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimant, has awarded a sum of Rs.5,38,311/- together with interest at 7.5% per annum from the date of the claim petition till realisation and proportionate costs. The break up particulars are as follows:-

Particulars	Amount awarded by the Tribunal
As per Ex.A.15 wound certificate	Rs.11,000/-
As per Ex.20 hospital bills	Rs.3,69,779/-
As per Ex.21 medical bills	Rs.20,851/-
As per Ex.22 ambulance bill	Rs.17,201/-
As per Ex.23 physiotherapy bill	Rs.69,480/-
As per Ex.26 disability certificate	Rs.50,000/-
Total	Rs.5,38,311/-

5. As against the said award passed by the Tribunal, the claimant has preferred this appeal before this Court seeking enhancement of compensation.



6. The learned counsel appearing for the appellant/claimant would contend that the Tribunal has failed to consider the injuries, which are grievous in nature, sustained by the claimant. Further, the Tribunal has failed to consider the evidence of P.W.5-Doctor, who had assessed the disability at 50%. The learned counsel would further submit that the Tribunal has awarded only a meager sum of Rs.5,38,311/- as compensation and hence, prays for enhancement of the award passed by the Tribunal.

7. The learned counsel appearing for the second respondent/Insurance Company would contend that the Tribunal, after considering the evidence adduced on the side of the claimant, awarded a just and reasonable compensation to the claimant and hence, prays for dismissal of this appeal.

8. This Court has considered the submissions made by the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the second respondent/insurance company and perused the materials available on record.

9. On a perusal of the records, it is seen that, due to the accident, the claimant has sustained grievous injuries and the Doctor/PW.5, who examined the claimant, had issued the disability certificate/Ex.A.26 assessing the disability suffered by the claimant as 50%.

10. After going through the oral evidence of P.W.5-Doctor and Ex.P.26-Disability Certificate issued by P.W.5, I am of the view that such the finding given by the Tribunal by fixing the disability at 50% does not call for any interference by this Court and the compensation awarded by the Tribunal is found to be just and reasonable. Therefore, the appeal is liable to be dismissed.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 15.06.2010 passed by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Salem, in M.C.O.P.No.1949 of 2006, is confirmed.

12.If the award amount with accrued interest has not been deposited, the second respondent-Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1949 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant herein/claimant is



permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

smn

To

1.The Additional District Judge, FTC-I,
The Motor Accidents Claims Tribunal,
Salem

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

+1 cc to Mr.P.Kandasamy Advocate sr30335

+1 cc to Mr.C.Kulanthaivel Advocate sr30429

C.M.A.No.2481 of 2011

rsl(co)
aa22/11/2019