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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2326 of 2015

J. Jayalakshmi ... Appellant

Vs.

1. G.Jaganath

R1 remained exparte before the Tribunal.

2. Oriental Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.8, UIL Building, Esplanade,
Chennai - 108.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2013 made in M.A.C.T.O.P.No.3610 of 2003 on the file of the Motor Accident Claims Tribunal and VI Court of Small Causes, Chennai.

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For Respondents: R1 Set Exparte
Mr.D.Baskaran for R2

J U D G M E N T

The claimant in M.C.O.P.No.3610 of 2003 on the file of the Motor Accident Claims Tribunal, Chennai is the appellant. The claimant/appellant claimed compensation of a total sum of Rs.1,00,000/- for the injury suffered by her in an accident involving the vehicle belonging to the first respondent and insured with the second respondent. She made the claim under various heads. It is not necessary to go into details.

2. The Tribunal found that the accident was entirely due to the rash and negligent driving of the vehicle by the driver of the first respondent. There is no appeal challenging the said finding and the same is confirmed. Aggrieved against the quantum fixed by the Tribunal, the claimant has preferred the above appeal.

3. The learned counsel for the appellant submitted that the Doctor has certified the disability at 35%, but the Tribunal failed to consider the same since there was no document filed to prove. Over all under various heads the



Tribunal has awarded Rs.26,000/- as compensation which is very meagre.

4. The only contention put forth by the learned counsel for the second respondent/Insurance Corporation is that the Tribunal has awarded a sum of Rs.26,000/- under various heads and another sum of Rs.20,000/- towards disability is not proper and the same had not been supported by any documentary evidences.

5. On a perusal of the award, it could be seen that P.W.2, the Doctor, who treated the claimant, in his evidence, has deposed that due to the accident, the claimant sustained 35% disability and issued Ex.P2 A.K.N.Nursing Home Report. The Tribunal has found that there is no wound certificate filed to prove that the petitioner, on account of the accident, has suffered fracture of shaft of left 3rd meta tarsal bone and also there is no direct evidence, but Ex.P.2 the letter signed by Dr.Reba Ashok, Medical Officer of A.K.N. Nursing Home, stating that the petitioner has sustained fracture of shaft of left 3rd meta tarsal bone and Ex.P.5 & Ex.P.6 prove that the petitioner sustained 35% disability and the same are taken into consideration.

6. This Court is of the opinion that taking into consideration the disability at 35% and also Ex.P.5 & Ex.P.6, the award amount granted by the Tribunal is enhanced to Rs.46,000/- from Rs.26,000/-

7. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

8. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.26,000/- is enhanced to Rs.46,000/-. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar



To

1. The Motor Accident Claims Tribunal and
VI Court of Small Causes, Chennai.

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

+lcc to Mr.M.Malar, Advocate, S.R.No. 44588

+lcc to Mr.D.Bhaskaran, Advocate, S.R.No. 44598

C.M.A.No.2326 of 2015

SS(CO)
GN(19/11/2019)