

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3440 of 2011

K.Padmavathy

... Appellant / Petitioner

.. Vs ..

1. R.Ratheesh Nair
(R-1 was set ex-parte in the trial Court)
2. Bajaj Allianz General Insurance Company Limited,
No.25/26, Prenze Tower,
College Road, V Floor,
Nungambakkam,
Chennai - 600 034. ... Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.12.2010 made in M.C.O.P.No.4349 of 2008 on the file of the learned Chief Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R-1 : Ex-parte

For R-2 : Mr.D.Bhaskaran

JUDGMENT

Seeking enhancement of compensation, the appellant/claimant has filed this appeal dissatisfied with the award dated 08.12.2010 passed by the learned Chief Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai, in M.C.O.P.No.4349 of 2008.

2.The short facts that are essential for the disposal of this appeal is that on 22.01.2008 at about 09.00 a.m., the deceased (namely Kumar) in M.C.O.P.No.4348 of 2008 was riding the motorcycle bearing Registration No.TN-20-L-7479 with the injured/petitioner in M.C.O.P.No.4349 of 2008 (namely Padmavathy) as pillion rider towards Avadi along Avadi-Poonamallee road at Mettuppalayam road junction and at that

time, the first respondent's TATA SUMO bearing Registration No.TN-20-AQ 9578 came from the opposite direction in a rash and negligent manner with high speed and dashed against the bike, due to which, both the rider and the pillion rider sustained injuries and the rider of the motorcycle died and the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle. Hence, the injured/claimant has filed a claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the said accident.

3. Before the Tribunal, on the side of the injured/claimant, P.Ws.1 to 3 were examined and Exs.P.1 to P.10 were marked. No witness was examined and no document was marked on the side of the respondents.

4. After considering both oral and documentary evidence adduced on the side of the claimant, the Tribunal has fixed the rash and negligence on the driver of the offending vehicle and awarded a sum of Rs.54,000/- together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. Being dissatisfied with the said award, the claimant has filed this appeal before this Court.

5. It is seen that in order to prove the nature of the injuries sustained by the injured/claimant, Dr.Saichandran was examined as P.W.3, who deposed that the injured/claimant has sustained 40% of disability. To prove the disability suffered by the injured/claimant, Ex.P.9-Disability Certificate and Ex.P.10-X-ray were marked. From the perusal of oral evidence of P.W.2, P.W.3 and Ex.P.9-Disability Certificate, the Tribunal has fixed the disability sustained by the injured/claimant at 30% and awarded a sum of Rs.30,000/- under the head of Disability. Considering the nature of injuries sustained by the injured/claimant, this Court is of the view that the amount of compensation awarded by the Tribunal under the head of Disability is enhanced to Rs.60,000/- from Rs.30,000/-. The Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings and the same is enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.11,000/- under the head of medical expenses and the same is confirmed. Further, under the head of extra nourishment, only a sum of Rs.1,000/- has been awarded by the Tribunal and the same is enhanced to Rs.5,000/-. A sum of Rs.2,000/- awarded by the Tribunal under the head of transport to hospital is enhanced to Rs.5,000/-. A sum of Rs.5,000/- awarded by the Tribunal under the head of loss of earning during treatment period is enhanced to Rs.15,000/-.

6. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Disability	Rs. 30,000/-	Rs. 60,000/-
2.	Pain and sufferings	Rs. 5,000/-	Rs. 10,000/-
3.	Medical expenses	Rs. 11,000/-	Rs. 11,000/-
4.	Extra Nourishment	Rs. 1,000/-	Rs. 5,000/-
5.	Transport to Hospital	Rs. 2,000/-	Rs. 5,000/-
6.	Loss of earning during treatment period	Rs. 5,000/-	Rs. 15,000/-
	Total	Rs. 54,000/-	Rs.1,06,000/-

7. In the result,

- I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.54,000/- to Rs.1,06,000/-.
- II. The interest granted by the Tribunal at 7.5% stands confirmed.
- III. The second respondent-Insurance Company is directed to deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.
- IV. On such deposit being made, the appellant/claimant is permitted to withdraw the enhanced award amount with interest, less the amount already withdrawn, if any.
- V. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation amount.
- VI. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to Mr.D.Baskaran, Advocate, S.R.No.11164

+1 cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.11072

C.M.A.No.3440 of 2011

SJ(CO)
SSM(03/09/2019)



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