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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3789 of 2011 & 1219 of 2019
and C.M.P.No.3380 of 2019

C.M.A.No.3789 of 2011:

Noorjan @ Noori

.. Appellant/Petitioner

Vs.

1.Sathish

2.The New India Assurance Co. Ltd.,
No.45, Second Line Beach,
Moore Street, Chennai - 1. .. Respondents/Respondents
(1st respondent remained exparte in
lower court)

C.M.A.No.1219 of 2019:

The New India Assurance Co. Ltd.,
No.45, Second Line Beach,
Moore Street, Chennai - 1. .. Appellant/Respondents 2

Vs.

1.Noorjan @ Noori

..Respondent/Petitioner

2.Sathish

.. Respondents/Respondent 1

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 23.12.2010 made in M.C.O.P.No.3583 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court No.1), Chennai.



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In C.M.A.No.3789 of 2011

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.S.Manohar

In C.M.A.No.1219 of 2019

For Appellant : Mr.S.Manohar

For R1 : Ms.A.Subadra
for Ms.M.Malar

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the award dated 23.12.2010 made in M.C.O.P.No.3583 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court No.1), Chennai.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The appellant in C.M.A.No.3789 of 2011 is claimant and the appellant in C.M.A.No.1219 of 2019 is 2nd respondent in M.C.O.P.No.3583 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court No.1), Chennai. The claimant filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 22.05.2004. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Bajaj auto rickshaw belonging to the 1st respondent and directed the 2nd respondent being insurer of the said auto rickshaw to pay a sum of Rs.1,01,500/- as compensation to the claimant. Not being satisfied with the award amount granted by the Tribunal, the claimant has come out with C.M.A.No.3789 of 2011, seeking enhancement of compensation. Against the said award dated 23.12.2010 made in M.C.O.P.No.3583 of 2004, the 2nd respondent-Insurance Company has come out with C.M.A.No.1219 of 2019, challenging the liability fastened on them.

4.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident did not occur



due to rash and negligent driving by the driver of the auto bearing registration No.TN-05-A-0040 belonging to the 1st respondent. The said auto was not involved in the accident. The claimant in collusion with 1st respondent and police, falsely implicated the auto belonging to the 1st respondent. Ex.P1 - accident register, Ex.P2 - FIR and Ex.P3 - rough sketch would clearly reveal that the accident has occurred only due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and the Tribunal erroneously held that the claimant did not dispute the negligence on the part of the driver of the auto. The police investigation and criminal proceedings are not binding on the Tribunal and the Tribunal ought to have rejected the evidence of PW2 and criminal proceedings. The claimant as PW1 has conceded that she did not know the registration number of the auto in which she travelled or the vehicle which caused the accident. In any event, the compensation awarded by the Tribunal is excessive and the claimant is not entitled for any enhancement of compensation and prayed for setting aside the award of the Tribunal.

5.Per contra, the learned counsel appearing for the claimant contended that the FIR was registered only against the driver of the auto belonging to the 1st respondent and charge sheet was laid against the driver of the auto. PW2 - Sub Inspector of Police has deposed that FIR and charge sheet were filed only against the driver of the auto belonging to the 1st respondent. The appellant did not examine the driver of the auto or any other witness to prove their contention that the accident has occurred only due to rash and negligent driving by the driver of unknown auto. The learned counsel for the claimant further contended that the claimant suffered multiple injuries all over the body and fracture in the left hand both bones. She has taken treatment in the hospital as in-patient for 37 days, underwent three surgeries and wire, rod and plates were fixed. Even after the surgery, the bones are malunited and during the treatment, the left hand got infected and one bone was removed. PW3 - Doctor assessed the disability suffered by the claimant at 50%. The Tribunal without any reason reduced the percentage of disability to 40%. The amounts granted by the Tribunal towards pain & suffering, disfigurement, loss of income, extra nourishment and transportation are meagre. The Tribunal has not awarded any amount towards damages to cloth, loss of amenities and attendant charges and prayed for dismissal of C.M.A.No.1219 of 2019, filed by the Insurance Company and allowing C.M.A.No.3789 of 2011 filed for enhancement of compensation.

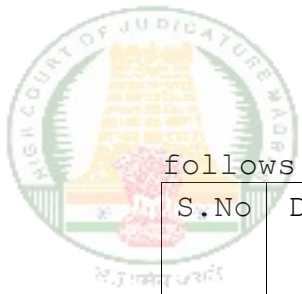
6.Heard the learned counsel appearing for the claimant as well as 2nd respondent-Insurance Company and perused the materials available on record.

7.From the materials available on record, it is seen that the claimant has stated that she was travelling in the auto



belonging to the 1st respondent bearing registration No.TN-05-A-0040 and the same was driven by its driver in a rash and negligent manner, dashed against the unknown auto and caused the accident. Due to the same, she suffered multiple injuries and fracture in the left hand. She also examined PW2 - Sub Inspector of Police who deposed that the FIR was registered against the driver of the auto belonging to the 1st respondent and the charge sheet was also laid against him. Ex.P1 to Ex.P4 were marked. It is the contention of the 2nd respondent-Insurance Company that the auto bearing registration No.TN-05-A-0040 was not involved in the accident and in collusion with the 1st respondent and police, the claimant filed the claim petition to claim compensation. According to the 2nd respondent-Insurance Company, the accident has occurred only by unknown auto. The appellant has not examined the driver of the auto or any other witness to prove the contention. The contention of the learned counsel for the 2nd respondent-Insurance Company is that FIR and charge sheet are against the driver of the unknown auto. From Ex.P1, Ex.P2 and Ex.P3, it is seen that the driver of the auto bearing registration No.TN-05-A-0040 belonging to the 1st respondent is shown as accused. In view of the above materials, there is no error in the finding of the Tribunal that the accident has occurred only due to rash and negligent driving by the driver of the auto belonging to the 1st respondent.

8.As far as the quantum of compensation is concerned, the claimant has contended that she has suffered fracture and she took treatment for 37 days. She underwent three surgeries and wire, rod and plates were fixed. Even after the surgery, the bones are malunited and during the treatment, the left hand of the claimant got infected and one bone was removed. PW3-Doctor certified the disability of the claimant at 50%. The Tribunal reduced the percentage of disability to 40% on the ground that PW3-Doctor has not examined the claimant in scientific method. The said reasoning is not correct. The claimant is entitled to compensation for 50% disability at the rate of Rs.2,000/- per percentage. Considering the nature of injuries and treatment taken by the claimant, the amount granted by the Tribunal towards permanent disability is modified to Rs.1,00,000/- (Rs.2,000/- x 50%). The Tribunal has awarded meagre sums of Rs.2,000/- towards transportation, Rs.1,500/- towards extra nourishment and Rs.9,000/- towards loss of earning and the same are hereby enhanced to Rs.5,000/- each towards transportation and extra nourishment and Rs.27,000/- towards loss of earning. The claimant has taken treatment for the injuries suffered in the hospital as in-patient for 37 days. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to cloth & articles. This Court awards a sum of Rs.15,000/- towards attendant charges, Rs.25,000/- towards loss of amenities and Rs.2,000/- towards damages to cloth & articles. The amount awarded by the Tribunal towards pain & suffering is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as



follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	2,000	5,000	Enhanced
2.	Loss of earning	9,000	27,000	Enhanced
3.	Extra nourishment	1,500	5,000	Enhanced
4.	Pain & sufferings	9,000	9,000	Confirmed
5.	Permanent disability	80,000	1,00,000	Enhanced
6.	Loss of amenities	-	25,000	Granted
7.	Attendant charges	-	15,000	Granted
8.	Damages to cloth & articles	-	2,000	Granted
	Total	Rs.1,01,500/-	Rs.1,88,000/-	Enhanced by Rs.86,500/-

9. In the result, C.M.A.No.1219 of 2019 filed by the Insurance Company is dismissed and C.M.A.No.3789 of 2011 filed by the claimant is partly allowed and the compensation of Rs.1,01,500/- awarded by the Tribunal is hereby enhanced to Rs.1,88,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar



To

1.The Additional District Judge,
Fast Track Court No.1,
Motor Accident Claims Tribunal
Chennai.

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

+1cc to Ms.M.Malar, Advocate SR.No.40054

+1cc to Mr.S.Manohar, Advocate SR.No.40092

C.M.A.Nos.3789 of 2011 & 1219 of 2019
and C.M.P.No.3380 of 2019

CA(CO)
GMY(19/12/2019)