

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.569 of 2011

Tmt.Bharathi ... Appellant/ Petitioner
..Vs..

1.M.Liyakath Ali
2.The United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai - 6. ... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 23.09.2010 in M.C.O.P.No.2843 of 2009 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.S.Sowmiya
for Mr.M.Selvam

For Respondents : Mr.C.Paranthaman for R2
R1 - No appearance

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2843 of 2009 on the file of the II Judge, Court of Small Causes, Chennai. She has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules seeking compensation of Rs.6,00,000/- for the injuries sustained by her in a road accident that took place on 23.07.2009.

2.The case of the appellant/claimant is that she was working as a labourer earning a sum of Rs.3,000/- per month and that on 23.07.2009, when she was walking along Ponneri high road near Chennai, a speeding Chevrolet car bearing Registration No. TN 20 BZ 5546 belonging to the first respondent hit her, as a result of which, she sustained injuries all over her body.

3.According to the appellant/claimant, the rash and negligent driving of the driver of the Chevrolet car bearing Registration No. TN 20 BZ 5546 belonging to the first respondent was the cause of the accident and that since the said car was insured with the second respondent,

the United India Insurance Company Limited, both of them are jointly and severally liable to pay compensation to her.

4.The owner of the car, namely, the first respondent remained absent before the tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. The learned II Judge, Court of Small Causes, Chennai, after analysing the evidence of record, awarded compensation of Rs.1,28,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the claim petition. Not satisfied with the award passed by the tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.

5.Ms.S.Sowmiya, learned counsel appearing for the appellant contended that though Dr.Saichandran (P.W.2) has assessed the partial permanent disability as 80%, the tribunal has fixed the partial permanent disability only as 50% and awarded compensation of Rs.1,00,000/- towards partial permanent disability. According to her, the award passed under the head permanent disability is very meagre. It is her further contention that only a sum of Rs.15,000/- has been awarded towards pain and sufferings. She would therefore contend that the award passed by the tribunal is liable to be enhanced.

6.Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent contended that the tribunal has assessed the partial permanent disability as 50% since Dr.Kalkura (P.W.3) has assessed the partial permanent disability only as 30%, though, Dr.Saichandran (P.W.2) has assessed the partial permanent disability as 80%. According to him, partial permanent disability fixed by the tribunal is perfectly in order and therefore, it does not require any interference by this Court at this juncture.

7.A perusal of the disability certificate (Ex.P10) issued by Dr.Kalkura (P.W.3) shows that appellant/claimant has sustained injury "left side condylar region" and that she was advised to take rest for six weeks. It is also seen that even though Dr.Kalkura (P.W.3) has assessed partial permanent disability as 30%, Dr Saichandran (P.W.2) without following any guidelines, assessed partial permanent disability as 80%. In the circumstances, the tribunal is right in fixing the partial permanent disability as 50%.

8.The tribunal has awarded compensation under various heads which is extracted hereunder:

S. No.	Head	Amount granted
1.	Permanent disability	Rs.1,00,000/-
2.	Loss of income during treatment	Rs.9,000/-
3.	Transport charges	Rs.1,000/-
4.	Extra nourishment	Rs.2,000/-
5.	Medical expenses	Rs.1,000/-
6.	Pain and sufferings	Rs.15,000/-
Total compensation		Rs.1,28,000/-

9.In the considered opinion of this Court, the award passed by the tribunal is perfectly in order and it does not need any interference by this Court.

10.In the result,

(i)The Civil Miscellaneous Appeal is dismissed.
No costs.

(ii)The decree and judgment passed in M.C.O.P.No.2843 of 2009, dated 23.09.2010, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai is upheld.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
II Court of Small Causes,
Chennai.

Copy to
The section officer,
VR Section,
High court
Madras

(2 copies)

+1cc to Mr. M.Selvam, Advocate SR.No. 1584

+2ccs to Mr. C.Paranthaman, Advocate SR.No. 1332

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A.SK (27/03/2019)