

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.480 of 2015

Anjali @ Anjalai

.. Appellant

Vs.

1.Khetmalji

2.United India Insurance Company Limited,
Branch Office-II, Oriental Complex,
Arunachalaasari Street, Salem - 1.

3.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Division, Dindugal Region,
Bye Pass Road, Dindugal Post and District.

4.Muthuramalingam

.. Respondents

(Notice to R1, R3 and R4 may be dispensed with for the time being since R1 & R4 set exparte before Tribunal and the claim has been dismissed against R3 & R4)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.04.2014 made in M.C.O.P.No.45 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Ms.T.Gayathri for
Mr.C.Kulanthaivel
For R2 : Mr.T.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 22.04.2014 made in M.C.O.P.No.45 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2.The appellant is the claimant in M.C.O.P.No.45 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. She filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by

her in the accident that took place on 06.11.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the driver of the van belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.26,000/- as compensation to the appellant/claimant. The Tribunal dismissed the claim petition against the respondents 3 and 4.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that appellant suffered only simple injuries on the ground that appellant failed to produce the wound certificate and accident register. The Tribunal failed to consider Exs.P8 and P9, discharge card and hospital bills and evidence of P.W.5/Doctor, which clearly reveals the nature of injuries suffered by the appellant and that appellant suffered grievous injuries and underwent surgery and malunited fracture. P.W.5/Doctor, only after clinically examining the appellant, has certified that appellant suffered 38% disability. The amount awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mr.T.Ravichandran, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not produced any wound certificate and accident register to prove the injuries caused to her in the accident. The appellant has not produced any document to show that she suffered grievous injuries. The Tribunal considered the materials on record and evidence of P.W.5/Doctor and awarded compensation towards simple injuries, which is not meager. The Tribunal considering the nature of injuries and in the absence of material evidence, granted compensation under different heads and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

8.From the materials on record, it is seen that it is the contention of the learned counsel for the appellant that in the accident, the appellant sustained grievous injuries. She was given first aid in Government Hospital, Vathalakundu and subsequently she was admitted in Rajarajeswari Nursing Home, Dindugal and again in Kamala Hospital, Salem. From the materials

on record, it is seen that the appellant has produced discharge card issued by Rajarajeswari Nursing Home, Dindugal as Ex.P8 and she has not produced wound certificate and accident register from all the hospital, where she has alleged to have taken treatment. P.W.5/Doctor has examined the appellant after 2 years and 3 months from the date of accident. The Tribunal considering the evidence of P.W.5/Doctor and disability certificate issued by him, rejected the disability certificate on the ground that appellant would have suffered the disability subsequently also. Considering the above materials, the Tribunal held that appellant failed to prove that she suffered grievous injuries in the accident and awarded a sum of Rs.15,000/- towards simple injuries and Rs.2,000/- towards pain and sufferings as compensation. Considering the materials on record, a sum of Rs.2,000/- granted by the Tribunal towards pain and sufferings is meager and the same is hereby enhanced to Rs.5,000/-. The Tribunal has not granted any amount towards extra nourishment, attendant charges and towards loss of cloth. Therefore, a sum of Rs.5,000/- towards extra nourishment, Rs.2,000/- towards attendant charges and Rs.500/- towards loss of cloth are granted by this Court. The amount awarded by the Tribunal towards medical expenses and simple injuries are 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.	Simple injuries	15,000/-	15,000/-	confirmed
2.	Pain and suffering	2,000/-	5,000/-	enhanced
3.	Medical expenses	9,000/-	9,000/-	confirmed
4.	Extra nourishment	-	5,000/-	granted
5.	Attendant charges	-	2,000/-	granted
6.	Loss of cloth	-	500/-	granted
	Total	Rs.26,000/-	Rs.36,500/-	enhanced by Rs.10,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.26,000/- is hereby enhanced to Rs.36,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the

Court fee, if any on the enhanced amount of compensation. The second 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 appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

krk

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to Mr.C.Kulanthaivel Advocate sr29065

+1 cc to Mr.T.Ravichandran Advocate sr29507

C.M.A.No.480 of 2015

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