

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.85 of 2015

P.Kalamani

... Appellant/Claimant

Vs

1.N.Rajan

2.M.Murthy

3.The National Insurance Company Limited,
Mettur Road,
Bhavani - 638 302.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2014 made in M.C.O.P.No.375 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.K.Govi Ganesan
For R3 : Mrs.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 10.10.2014 made in M.C.O.P.No.375 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

2.The appellant herein is the claimant aggrieved against the award of the Tribunal Rs.3,87,153/- as compensation against the claim of Rs.7,50,000/-.

3.The brief facts is as follows:

On 24.02.2012 at about 6 a.m. the petitioner was riding her Kinetic Honda Scooty bearing Reg.No.TN-33-H-3540 from east to west direction along with one Samiyathal who was travelling in the same vehicle as pillion rider. At that time the 1st

respondent being the driver of the car bearing Reg.No.TN-33-AW-5253 drove the same in a rash and negligent manner on the wrong side of the road from west to east and dashed against the scooty driven by the petitioner. Due to the said accident, the petitioner's right leg was fractured at thigh, knee and below knee Calcaneum and right pubic Rami and Acetabulum were fractured. She also sustained multiple injuries all over the body. The pillion rider also sustained multiple injuries. The petitioner was treated in Kovai Medical Centre Hospital (KMCH) Erode. Thus the petitioner claimed a sum of Rs.7,50,000/- as compensation for the injuries sustained by her in the accident.

4.The 3rd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that actually the 1st respondent had driven the car slowly by observing all traffic rules with cautious manner and the petitioner can very well avoid the accident. Further contended that the petitioner at the time of accident is not having valid driving license to drive the scooty and due to her inexperience she voluntarily invited the accident due to her carelessness. Hence, there is no fault on the part o the 1st respondent. Regarding the sum claimed by the petitioner is excessive in the absence of any proof.

5.The Tribunal observed the contentions raised by both side by way of evidence and documents and has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the said car and awarded a sum of Rs.3,87,153/- as compensation under the following heads:

Loss of income	Rs.9,000/-
Disability	Rs.96,000/-
Pain and suffering	Rs.15,000/-
Extra nourishment	Rs.10,000/-
Transportation charges	Rs.10,175/-
Damages to cloth and articles	Rs.2,518/-
Medical expenses	Rs.2,44,460/-
Total	Rs.3,87,153/-

Aggrieved against the said award the claimant has preferred this appeal.

6.In the grounds of appeal, the appellant has contended that the sum awarded by the Tribunal towards compensation at Rs.3,87,153/- against the claim of Rs.7,50,000/- is very much on

the meagre side. The sum awarded towards pain & suffering at Rs.15,000/- is very much on the meagre side, when there are sufficient evidence and proof placed before the Tribunal, that the injured was admitted as in-patient for nearly 23 days. It is further contended that the Tribunal failed to see that the appellant was doing tailoring works, and was earning not less than Rs.10,000/- per month from tailoring works. Due to the fracture of the right leg she is unable to walk, stand, squat, sit, and she cannot continue her work as she was doing earlier. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Heard Mr.K.Govi Ganesan, learned counsel appearing for the appellant and Mrs.R.Sreevidhya, learned counsel appearing for the 3rd respondent/Insurance Company and perused all the materials available on record.

8. On perusal of the records, it is seen that the claimant sustained grievous injuries due to the said accident. It is observed from her evidence and documents the claimant sustained grievous injuries and Ex.P.34/permanent disability certificate was produced by examining the PW5/Doctor. As per Ex.P6/wound certificate the claimant was also under treatment and the disability assessed by the Doctor at 43% was taken by the Tribunal by awarding Rs.2,000/- per percentage and the said sum has been awarded. The grievance made by the claimant is that when there is disability sustained by the claimant at 43%, the sum awarded at Rs.2,000/- is very much on the meagre side. Considering the nature of occupation and also the income that was lost by the claimant and also her future prospects.

9. On the other hand the respondent/Insurance Company vehemently contended that the sum awarded by the Tribunal is very much reasonable by taking entire disability of 43%. In view of the above submissions and considering the date of accident, disability and the injuries sustained by the claimant, the sum awarded at Rs.2,000/- this Court inclined to modify as Rs.3,000/- per percentage and accordingly, it is calculated as $43\% \times \text{Rs.}3,000 = \text{Rs.}1,29,000/-$. While verifying the nature of injuries and also the period of treatment under went by the claimant, the sum awarded under the head towards pain & suffering at Rs.15,000/- has to be properly considered by awarding a sum of Rs.25,000/-. Since, the sum awarded by the Tribunal towards loss of income is meagre, the same is enhanced to Rs.15,000/-. It is seen that the Tribunal has not awarded any amount towards attendant charges, hence a sum of Rs.10,000/- is granted towards attendant charges. The sum awarded by the Tribunal under other heads 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)
1.	Loss of income	Rs.9,000/-	Rs.15,000/-
2.	Disability	Rs.96,000/-	Rs.1,29,000/-
3.	Pain and suffering	Rs.15,000/-	Rs.25,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Transportation charges	Rs.10,175/-	Rs.10,175/-
6.	Damages to cloth and articles	Rs.2,518/-	Rs.2,518/-
7.	Medical expenses	Rs.2,44,460/-	Rs.2,44,460/-
8.	Attendant charges	-	Rs.10,000/-
	Total	Rs.3,87,153/-	Rs.4,46,153/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,87,153/- is hereby enhanced to Rs.4,46,153/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

11. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 3rd 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/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

mtl

To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

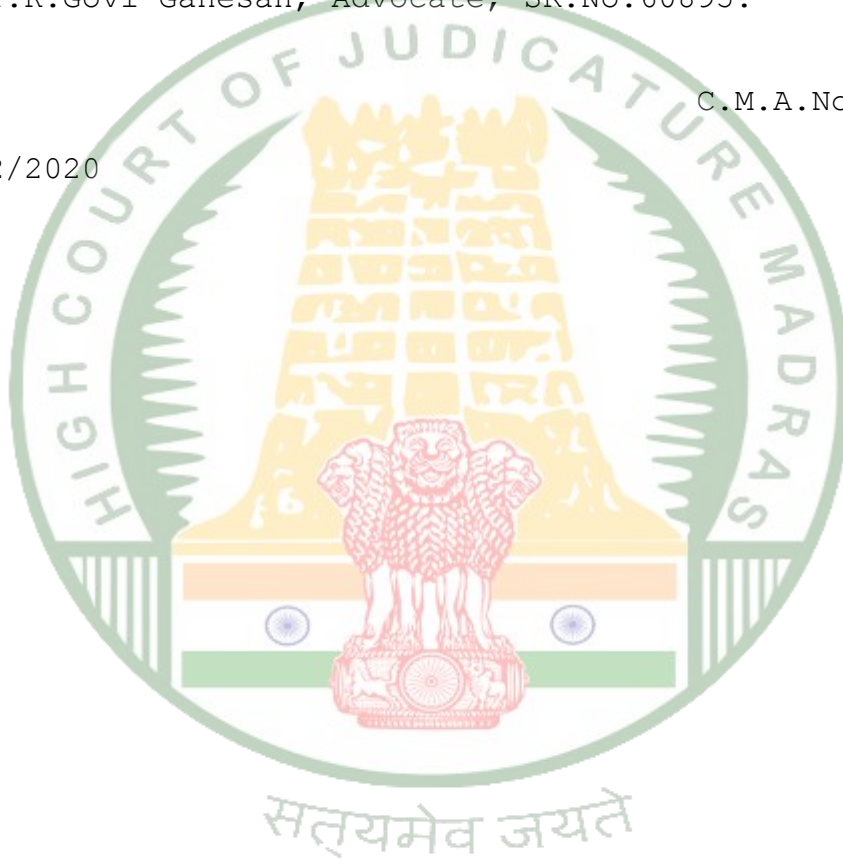
2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mrs.Sree Vidhya, Advocate, SR.No.62017.

+1cc to Mr.K.Govi Ganesan, Advocate, SR.No.60895.

C.M.A.No.85 of 2015

GP(CO)
CSR: 10/02/2020



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