

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3527 of 2013

P.Saroja

.. Appellant /Petitioner

Vs.

1.S.Kandaswamy
(R1 was set exparte
in the trial Court)

2.ICICI Lombard General Insurance Co. Ltd.,
1st Floor, Arihant Plaza,
No.84/85, Waltax Road,
Chennai-3

.. Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2012 in MACT.O.P.No.4852 of 2009 on the file of the learned V Judge, Motor Accidents Claims Tribunal/Small Causes Court, Chennai.

For Appellant : Mr.C.Munuswamy
For C & K Law Firm

For Respondents: Mrs.R.Srividhya - R2
R1 Exparte before the Tribunal

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 14.08.2012 in MACT.O.P.No.4852 of 2009, on the file of the learned V Judge, Motor Accidents Claims Tribunal/Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4852 of 2009, on the file of Motor Accidents Claims Tribunal/Small Causes Court, Chennai. She filed the above 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 21.12.2009.

3. 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 motor cycle bearing Registration No.TN 07 AJ 5744 belonging to the first respondent and insured with the second respondent and allowed the case in part and directed the first and second respondent/Insurance Company to pay a sum of Rs.27,600/- as compensation to the appellant/claimant.

4. Not being satisfied with the award dated 08.10.2012 made in M.C.O.P.No.4852 of 2009, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant was a flower vendor, earning a sum of Rs.200/- per day and she is a only breadwinner of her family. However, the Tribunal has not passed any amount towards loss of income, mental agony and loss of amenities. The Tribunal ought to have enhanced the amounts for attender charges, transportation, pain and sufferings. The Tribunal failed to consider the evidence of P.W.2/Doctor, who treated the appellant and assessed the disablement of 25%. Due to the injuries, the appellant cannot do any work without help of others. The Tribunal ought to have awarded compensation for permanent disability apart from compensation for loss of earning power. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that amounts awarded by the Tribunal under various heads are excessive and hence the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and also perused all the materials available on record.

8. From the materials on record, it is seen that due to the injuries sustained by the appellant in the accident, her hip and skull were fractured multiple injuries all over the body. The Doctor, who was examined as P.W.2, has certified that permanent disability of appellant is 25%. The Tribunal considering the evidence of P.W.2/Doctor and nature of injuries, has rightly awarded a sum of Rs.25,000/- towards transportation, Extra nourishment, loss of income, damage to clothes and pain and sufferings. The appellant has produced the medical bill i.e. Ex.P4 for a sum of Rs.2,559/- and the same has been awarded.

9. In the cross examination itself, the appellant has

admitted that there is no fracture on her and the Doctor, P.W.2 has also stated that there is no fracture and suture on the appellant. The injuries sustained by the appellant are simple in nature. Considering the facts that this Court is not inclined to enhance the award amounts passed by the Tribunal. Hence, there is no error in the award passed by the Tribunal warranting interference by this Court.

10. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with accrued 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 award amount, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

The V Judge, Motor Accidents Claims Tribunal/
Small Causes Court, Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 102962

C.M.A.No.3527 of 2013

RJI (CO)
GN(04/09/2020)

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