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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.582 of 2013

K.Kaveri

..Appellant/Petitioner

..Vs..

1.K.P.Sampath

2.National Insurance Company Limited,
No.37, Pantheon Road,
Near Ashoka Hotel,
Egmore,Chennai 8.

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.07.2012 in M.A.C.T.O.P.No.1831 of 2011 on the file of the Motor Accidents Claims Tribunal, (In the Court of VI Small Causes) Chennai.

For Appellant : Mr.F.Terry Chellaraja for
Mrs.M.Malar

For Respondents : R1 - Set Exparte before Claims Tribunal
R2 - Mr.S.Arunkumar

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, (VI Small Causes Court) Chennai, in and by its award dated 26.07.2012 in M.C.O.P.No.1831 of 2011, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 27.04.2011, at 19.15 hours, when the appellant/claimant was crossing a Pedestrian Cross from South to North direction at Rajiv Gandhi Salai, near C.T.S. Karapakkam, at that time, a motor cycle, bearing Registration No.TN 09 AS 7570 ridden by the first respondent came in a rash and negligent manner and hit the appellant/claimant, as a result of which, the appellant/claimant sustained grievous injuries all over her body. Hence, the appellant/claimant made a claim petition in a sum of Rs.2,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.



3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/Insurance Company contested the claim by filing a counter statement, denying their liability and also disputing the age, occupation, income of the deceased and also contended that the claim sought for is excessive and thus, prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.J.R.R.Thiagarajan as P.W.2 and marked 7 documents as Ex.P.1 to Ex.P.7. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident had occurred due to the rash and negligent riding of the motor cycle by the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal has awarded a total sum of Rs.25,000/- towards, i) Pain and Sufferings; ii) Transportation and iii) Loss of earning, inclusive Medical bill of the claimant, with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the appellant/claimant.

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already stated above.

8. Mr.F.Terry Chellaraja, learned counsel appearing for the appellant/claimant submitted that the claimant sustained injuries due to the accident and took treatment at Global Hospital, where, he was treated as inpatient from 27.04.2011 to 29.04.2011 (i.e. for three days). The learned counsel further submitted that, Ex.P.5, Scan report shows that the claimant has sustained the following injuries (a)Soft tissue hematoma in left side of face; (b)Pericranial hematoma in left frontal and right parietal region, and (c)No intra/extra axial bleed and owing to the same, the appellant/claimant is still suffering from headache, giddiness and also finding it difficult to lift heavy objects. Dr.J.R.R.Thiagarajan, who was examined before the Claims Tribunal as P.W.2, has assessed the disability of the claimant as 20% and issued Disability Certificate (Ex.P.7) to that effect.



9. Therefore, the learned counsel submitted that when the injuries sustained by the appellant/claimant is serious in nature, the impact of which is still subsisting, the Tribunal has held that the injuries sustained by the appellant/claimant is simple in nature and has passed an award for a total sum of Rs.25,000/- under the heads of Pain and Sufferings, Transportation, Loss of earning and Medical Expenses collectively, which is unfair and requires appropriate enhancement.

10. Per contra, Mr.S.Arunkumar, learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal has awarded a just and fair compensation. Therefore, he pleaded no interference is required at this juncture.

11. Considering the nature of injuries sustained by the appellant/claimant and submissions of both side counsels, this Court is inclined to increase the compensation awarded by the Tribunal from Rs.25,000/- to Rs.60,000/-.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.25,000/- to Rs.60,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/National Insurance Company Limited is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



4

To

The Motor Accidents Claims Tribunal,
VI Small Causes Court,
Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.S.Arun Kumar, Advocate Sr.No. 30045
+1 cc to M/s.M.Malar, Advocate Sr.No.28864

AKM/11.11.19/4P-5C /

C.M.A.No.582 of 2013