

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2534 of 2019

Rajathi

... Appellant

Vs

1.Thangaraj

2.Bharti Axe General Insurance Co., Ltd.,

16/9, 5th Floor, Cheran Plaza,

Trichy Road, Coimbatore.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.03.2019 made in M.C.O.P.No.553 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.Poomalai

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 08.03.2019 made in M.C.O.P.No.553 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The brief facts is as follows:

On 02.08.2014 at about 7.45 P.M. hours when the petitioner was standing near Temple in Namakkal to Tiruchengode main road near Peria Ongaliamman Koil, at that time the rider of the TVS XL Super 70 bearing Reg.No.TN-34-K-3875 ride the vehicle in a rash and negligent manner and without noticing the traffic rules, and hit the petitioner. Due to the said accident, the petitioner sustained grievous injuries on his hip, leg and all over body. Thus the petitioner claimed a sum of Rs.15,00,000/-

as compensation for the injuries sustained by her in the accident.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the driver of the 1st respondent vehicle bearing Reg.No.TN-34-K-3875 was not holding a valid and effective driving license at the time of the accident. Further contended that as per Section 134(c) of M.V.Act 1988, it is a mandatory duty of the insured/1st respondent herein to furnish the particulars of policy, date, time and place of accident, particulars of injured and the name of the driver and particulars of the driving license but the 1st respondent herein has not complied with statutory demand. Hence the Insurance Company is not liable to pay compensation. The sum claimed by the petitioner is also excessive in the absence of any proof.

4.The Tribunal upon analysing the contentions raised by both side by way of evidence and documents, has given a finding that the accident occurred only due to the rash and negligent driving on the part of the rider of the motorcycle and awarded a sum of Rs.67,115/- as compensation under the following heads:

Disability	Rs.15,000/-
Medical expenses	Rs.37,115/-
Pain and suffering	Rs.10,000/-
Extra nourishment	Rs.5,000/-
Total	Rs.67,115/-

Aggrieved against the said award the claimant has preferred this appeal for enhancement of compensation.

5.In the grounds of appeal, the appellant has contended that the sum awarded by the Tribunal as compensation at Rs.67,115/- against the claim of Rs.15,00,000/- is very much on the meagre side. The appellant was aged about 75 years. She was working as a maid servant and was earning a sum of Rs.10,000/- per month. Due to the said accident she sustained injuries and fracture (Fracture of pubic rami right hip). The appellant was admitted in Government Hospital at Tiruchengode for first aid treatment and she shifted to Krishna Hospital and she had taken treatment as in-patient from 02.08.2014 to 12.08.2014 nearly for 10 days. During the treatment she under went surgery, plate and screws were fixed. The appellant further contended that due to the injuries sustained by her, she could not do her work as before. So she lost her entire earning power and this aspect was not

considered by the Tribunal. The Medical Board examined the appellant and has given 15% of permanent disability. The Tribunal has also not awarded any sum towards extra nourishment, attender charges and loss of amenities. The sum awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.Poomalai, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. On perusal of the records, it is seen that the claimant sustained grievous injuries due to the said accident. It is clear that the appellant is aged 75 years and she also met with an accident while she was standing in the road side. It is also proved that the 1st respondent vehicle ride the vehicle in a rash and negligent manner and caused the accident. While determining the compensation, the Tribunal by taking into consideration the document Ex.P4/wound certificate has concluded that the claimant sustained fracture in the right hip as well as in her right leg. Apart from that she also sustained multiple injuries. The Medical Board issued disability certificate assessing the disability at 5%. While considering the nature of injuries and the age of the appellant, the Tribunal has taken 5% disability and by taking Rs.3,000/- per percentage and awarded a sum of Rs.15,000/- under the head disability. With regard to the medical expenses incurred by the appellant, the Tribunal by considering Ex.P7/medical bills and has properly awarded a sum of Rs.37,115/- towards medical expenses. PW2/Doctor also confirms the same that the said medical bills were issued by his Hospital. The appellant is very much aggrieved the sum awarded by the Tribunal at Rs.10,000/- towards pain and suffering. The further grievance of the appellant is that the sum under the head extra nourishment is on the meagre side. In view of the injuries and treatment taken by the claimant, this Court is also of the view that the sum awarded by the Tribunal towards pain & suffering and extra nourishment are meagre and hence the same are enhanced to Rs.15,000/- and Rs.10,000/- respectively under those heads. It is seen that the Tribunal has not awarded any amount towards attendant charges and transportation charges. This Court grants a sum of Rs.10,000/- towards attendant charges and Rs.2,000/- towards transportation charges. 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.	Disability	Rs.15,000/-	Rs.15,000/-
2.	Medical expenses	Rs.37,115/-	Rs.37,115/-
3.	Pain and suffering	Rs.10,000/-	Rs.15,000/-
4.	Extra nourishment	Rs.5,000/-	Rs.10,000/-
5.	Attendant charges	-	Rs.10,000/-
6.	Transportation charges	-	Rs.2,000/-
	Total	Rs.67,115/-	Rs.89,115/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.67,115/- is hereby enhanced to Rs.89,115/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

9.The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd 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 VI)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchengode.

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

+2cc to Mr.C.Paraneedharan, Advocate Sr.66029
+1cc to M/s.K.Poomalai, Advocate Sr.65706

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srg 26/11/2019