

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1534 of 2017

R.Kousalya

... Appellant/petitioner

Vs

1.K.Daniel

2.United India Insurance Company Ltd.,
Motor Third Party Claims HUB
Silinghi Buildings,
No.134, Greams Road
Chennai-600 006. ... Respondents/Respondent

Prayer:Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.01.2017 made in MACTOP No.8221 of 2013 on the file of the III Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.M.Swamikkannu

For Respondents : Mr.A.Dhiraviyanathan for R2
R1-Experte

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.1,33,300/- towards compensation due to the injuries sustained by her in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 18.05.2013 at about 18.00 hours, the appellant / claimant was walking on the northern side of the MTH Road near Villivakkam Police Station. At that time, the motorcycle bearing Reg.No.TN-02-AW-2378 belonging to the first respondent and insured with the second respondent Insurance Company, came from West to East direction at high speed, in a rash and negligent manner and dashed against the appellant. Due to the said impact, the appellant sustained multifarious fractures and grievous injuries. The appellant / claimant filed a claim petition before the Tribunal, claiming a sum of Rs.7,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total

compensation of Rs.1,33,300/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4.The learned counsel for the appellant /claimant has submitted that the Tribunal has erred in fixing the monthly income of the appellant at Rs.6,500/- in arriving at the compensation towards loss of earning. He further submitted that the amounts awarded by the Tribunal towards other heads are meagre. Stating so, the learned counsel prayed for enhancement of compensation.

5.The learned counsel for the second respondent Insurance Company has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company and perused the materials available on record carefully and meticulously.

7.The details of compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
Loss of income	20,736/-
Attender charges	1,500/-
Transport to hospital	5,000/-
Extra nourishment	10,000/-
Damages to clothes	1,000/-
Pain and suffering	40,000/-
Damages for mental and physical shock	10,000/-
15% disability	45,000/-
TOTAL...	1,33,236/-
	=====
	(rounded off to Rs.1,33,300/-)

8.P.W.2-Doctor deposed before the Tribunal that the injured sustained 20% disability and he issued Ex.P5-Disability Certificate to that effect. But the Tribunal has reduced the same to 15%. It is seen that the appellant suffered head injury with pneumocephalis and because of the same, she suffers from head ache and giddiness. This is the opinion given by the Doctor in the Disability Certificate. Considering the nature of injuries, this Court is of the considered opinion that the percentage of disability at 20% fixed by P.W.2-Doctor appears to be correct. If that is adopted, the amount towards disability works out to Rs.60,000/-. Accordingly, the amount awarded by the Tribunal towards disability stands modified to Rs.60,000/-. Further, in view of the injuries sustained, the appellant / claimant had lost her comfort to a certain extent. Considering the said aspect, it would be appropriate to award a sum of Rs.10,000/- towards loss of amenities. The amounts awarded by the Tribunal towards other heads are confirmed.

9.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
Loss of income	20,736/-
Attender charges	1,500/-
Transport to hospital	5,000/-
Extra nourishment	10,000/-
Damages to clothes	1,000/-
Pain and suffering	40,000/-
Damages for mental and physical shock	10,000/-
20% disability	60,000/-
Loss of amenities	10,000/-
TOTAL...	1,58,236/-
	=====

(rounded off to Rs.1,58,300/-)

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,58,300/-. It is made clear that only for the compensation of Rs.1,33,300/- awarded by the Tribunal, the interest rate of 7.5% per annum shall be calculated from the date of claim petition. For the enhanced amount of Rs.25,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

10.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

11.The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal.

s/d-

Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

KM

To

1.The III Judge, Court of Small Causes,
Motor Accidents Claims Tribunal, Chennai.

copy to

The Section Officer,
VR Section,
Madras High Court.

+1 cc to Mr.A.Dhiraviyanathan Advocate sr88976
+1 cc to Mr.M.Swamikkannu Advocate sr89025

C.M.A.No.1534 of 2017

mr (co)
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