

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2700 of 2017

Deenamma

... Appellant/Claimant

Vs

1. Excel Oils and Chemicals Pvt., Limited,
GF-1 B A Enclave, New No.48,
CIT Nagar, 1st Main Road,
Nandanam, Chennai - 35.

(Since R1 remained xparte before the Tribunal
his presence may be dispensed with)

2. HDFC ERGO General Insurance Co. Ltd.,
Raheja Towers, Ground Floor,
No.177, Annasalai,
Chennai - 600 002. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.07.2017 made in M.A.C.T.O.P.No.5869 of 2013, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellants : Ms.M.Malar

For R2 : M/s.M.B.Gopalan Associates

R1 : Exparte

JUDGMENT

The facts of the case are that on 03.05.2013 at about 1.15 hours, appellant / claimant was proceeding as a pedestrian to cross the road near Mudhalai Pannai, ECR Road, from left to right direction. At that time, the Honda Civic Car bearing Reg.No.TN-09-AR-2127 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the appellant. Due

to the said impact, the appellant sustained grievous injuries. Stating that, the accident had occurred only due to the rash and negligent driving of the driver of the car, she filed a claim petition, claiming compensation of Rs.12,00,000/-. The Tribunal, after considering the oral and documentary evidence, awarded a total compensation of Rs.49,000/- with interest at 9% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant/claimant has preferred this appeal seeking enhancement of the same.

2.The learned counsel for the appellant/claimant has submitted that P.W.2-Doctor assessed the claimant and fixed the percentage of disability at 10%, but the Tribunal came to the conclusion that the appellant sustained no disability. Further, she submitted that the Tribunal has awarded a lesser sum of Rs.15,115.89 towards medical bills. It is further submitted that the compensation awarded under other heads are also very meagre and hence, the same requires enhancement.

3.Per contra, the learned counsel for the second respondent/ insurance company has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

4.Heard the learned counsel on either side and perused the materials available on record.

5.This is a claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, this Court is not inclined to go into the findings of the Tribunal with respect of negligence as well as the liability of the second respondent insurance company to pay compensation.

6.The appellant/claimant herself has been examined as P.W.1, who deposed before the Tribunal that at the time of accident, she was 65 years and was earning a sum of Rs.10,000/- per month as a Tailor; that due to the impact of the accident, she sustained traumatic brain injury, right fronto parietal extra dural Hematoma and multiple injuries all over the body. The Doctor, who treated the claimant, was examined as P.W.2 and according to him, the appellant/claimant sustained 10% permanent disability. Ex.P6 is the Disability Certificate and Ex.P7 is the Scan Report. However, the Tribunal has not taken the disability of the claimant, which seems to be unfair and unjust, warranting interference. Taking note of the evidence of the doctor and the nature of the injuries suffered by the appellant/claimant, this Court is inclined to take the percentage of disability assessed by the doctor at 10% and to

award a sum of Rs.3,000/- per percentage of disability. Accordingly, a sum of Rs.30,000/- is awarded towards permanent disability. The Tribunal has awarded Rs.15,115.89 towards medical bills, when the fact remained that as per Exs.P3 & P4- medical bills, the actual medical expenses incurred by the appellant/claimant is Rs.76,421/-. Hence this Court is inclined to modify the amount awarded towards medical expenses to Rs.76,421/-. There is no modification with regard to the award of Rs.2,000/- towards Attender charges, Rs.12,000/- towards loss of Income, Rs.10,000/- towards Pain and suffering, Rs.5,000/- towards transportation and Rs.5,000/- towards extra nourishment. The details of the modified compensation are as follows:

Head	Amount (Rs.)
Medical bills	76,421/-
Attender Charges	2,000/-
Loss of Income	12,000/-
Pain and suffering	10,000/-
Transport to Hospital	5,000/-
Extra Nourishment	5,000/-
10% Permanent Disability	30,000/-
Total.....	1,40,421/-

Thus, the appellant / claimant is entitled to the modified compensation of Rs.1,40,421/- with interest at the rate of 9% per annum from the date of petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

7.In the result, appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified amount of compensation, as ordered above, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

av/km

To

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

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Ms.M.Malar, Advocate SR.No.87809

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.87886

C.M.A.No.2700 of 2017

MP (CO)
GMY (10/11/2020)



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