

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3016 of 2017

R.Sowriammal

...

Appellant /Petitioner

Vs

1.Mahendra Kumar D.Davey
(Set exparte in the Trial Court)

2.The Reliance General Insurance Co.Ltd.
Regional Office (Legal Department)
Reliance House, 6th Floor
No.6, Haddows Road,
Chennai-600 034.

.... Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.01.2017 made in MACTOP No.1048 of 2012 on the file of the III Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikkannu

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

JUDGMENT

This appeal is preferred by the appellant/claimant against the award of a sum of Rs.1,83,000/- 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 08.12.2011 at about 6.00 hours, the appellant / claimant was crossing Khader Nawaz Khan Road, Opposite to Door No.26/10, Sahib Buhari House, Chennai from West to East direction. At that time, the motorcycle bearing Reg.No.TN-05-Z-2936 belonging to the first respondent and insured with the second respondent Insurance Company, came in a rash and negligent manner at high speed from North to South direction and dashed against the appellant / claimant. Due to the said impact, the appellant sustained grievous multiple

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.1,83,000/- 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 reducing the disability at 25% and awarding Rs.75,000/- against the claim of Rs.2,00,000/- towards this head, when the Orthopaedic Surgeon, after examining and verifying the medical records of the appellant came to the conclusion that the claimant suffered 30% disability. It is also submitted that the amounts awarded 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 on either side 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	22,500.00
Transport to hospital	5,000.00
Extra nourishment	10,000.00
Damages to clothes	1,000.00
Medical expenses	19,458.03
Pain and suffering	40,000.00
Damages for mental and physical shock	10,000.00

25% disability	75,000.00

TOTAL...	1,82,958.03
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(Rounded off to Rs.1,83,000/-)	

8.It is seen from Ex.P7-Disability Certificate that the appellant / claimant suffered fracture of neck of left humerus; head injury with laceration scalp; multiple abrasions in the left knee and left thigh down; she was treated with Pop "U" and there was malunion of neck of left humerus fracture. Since the injuries suffered by the appellant are grievous in nature, certainly there would be a loss of comfort for her and in this regard, it would be appropriate to award a sum of Rs.15,000/- towards loss of amenities. Further, even though P.W.2-Doctor has thoroughly examined the appellant / claimant and assessed the disability at 30%, the Tribunal has reduced the percentage of disability to 25% and awarded a sum of Rs.75,000/- at the rate of Rs.3,000/- per percentage of disability. This Court is of the considered view that the disability of 30% fixed by P.W.2-Doctor has to be taken into consideration, in view of the grievous injuries sustained by the appellant / claimant. It that is done, the amount towards disability works out to Rs.90,000/-. Accordingly, the amount awarded by the Tribunal towards disability stands modified to Rs.90,000/-. The amounts awarded towards other heads are confirmed.

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

HEADS	AMOUNT (Rs.)
Loss of income	22,500.00
Transport to hospital	5,000.00
Extra nourishment	10,000.00
Damages to clothes	1,000.00
Medical expenses	19,458.03
Pain and suffering	40,000.00
Damages for mental and physical shock	10,000.00
30% disability	90,000.00
Loss of amenities	15,000.00

TOTAL... 2,12,958.03

(Rounded off to Rs.2,13,000/-)

Thus, the appellant / claimant is entitled to the modified compensation of Rs.2,13,000/-. It is made clear that only for the compensation of Rs.1,83,000/- 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.30,000/-, 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.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KM

To

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

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

+lcc to Mr.M.Swamikannu, Advocate, S.R.No. 86754

+lcc to Mr.S.Arunkumar, Advocate, S.R.No. 86551

C.M.A.No.3016 of 2017

GJ(CO)
GN(19/03/2020)