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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.384 of 2017

B.Kanchana .. Appellant /Petitioner

Vs.

1.M.Rajendran

2.Reliance General Insurance Co, Ltd.,
Heavipree, Unit No.1, III Floor,
23, Spur Tank Road, Chetpet,
Chennai 31.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.04.2016 and made in M.C.O.P.No.401 of 2012, on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

For Appellant : Mrs.Ramya V.Rao

For R2 : Mr.E.Rajadurai
For M/s.M.B.Gopalan Associates

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 26.04.2016 and made in M.C.O.P.No.401 of 2012, on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.401 of 2012, on the file of the Motor Accidents Claims Tribunal, V Judge, Small Causes Court, Chennai. She filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 01.03.2009. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.2,16,000/- as compensation to the appellant. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of



compensation.

3.The learned counsel appearing for the appellant contended that the 2nd respondent-Insurance company did not plead and prove that offending vehicle belonging to 1st respondent was not insured with them at the time of accident. The Tribunal failed to take into consideration the xerox copy of the insurance policy on record and erroneously dismissed the claim petition against the Insurance company. The Tribunal has dismissed the claim petition against the Insurance Company on the ground that the appellant has not mentioned the policy number and has not taken any steps to amend the claim petition to include the policy number. The reasons given by the Tribunal are not valid for dismissing the claim petition against the Insurance Company. The appellant has examined P.W.3-Doctor and marked Ex.P13-disability certificate to show the percentage of disability suffered by the appellant. The Tribunal erroneously reduced the percentage of disability to 30% on the ground that the P.W.3-Doctor has not filed working sheet and guidelines and prayed for setting aside the award dismissing the claim petition against Insurance Company and for enhancement of compensation.

4.Per contra, Mr.E.Rajadurai, the learned counsel appearing for the 2nd respondent contended that at the time of accident the appellant has not proved that vehicle was insured with the 2nd respondent. The Tribunal considering the same, rightly dismissed the claim petition against Insurance company and amount awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.From the materials on record, it is seen that the appellant has filed xerox copy of the policy on record. The Tribunal took note of the xerox copy of the insurance policy and did not accept the same on the ground that the same was not brought on record as document. The appellant has filed xerox copy of the policy as an additional document. Considering the insurance policy issued by the 2nd respondent/Insurance Company which was in force at the time of accident, the award of the Tribunal dismissing the claim petition against the 2nd respondent-Insurance company is liable to set aside and it is hereby set aside. The 2nd respondent-Insurance company is directed to pay compensation to the appellant as insurer of the Tata Ace belonging to the 1st respondent.



7.As far as quantum of compensation is concerned the appellant examined P.W.3-Doctor who has certified that appellant suffered 50% disability. The Tribunal reduced the percentage of disability to 30% on the ground that P.W.3-Doctor has not filed working sheet and guidelines and disability assessed by the P.W.3/Doctor is on higher side. The said reason is not correct. The appellant is entitled to compensation for 50% disability. The accident is of the year 2009. A sum of Rs.1,00,000/- is awarded for 50% disability at the rate of Rs.2,000/- per percentage. The amount awarded by the Tribunal under different heads are just compensation. Thus, the amounts granted by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation and Extra Nourishment	15,000	15,000	Confirmed
2.	Attendant Charges	4,750	4,750	Confirmed
3.	Disability	90,000	1,00,000	Enhanced
4.	Loss of Earning	26,000	26,000	Confirmed
5.	Pain and Suffering	40,000	40,000	Confirmed
6.	Loss of Amenities	40,000	40,000	Confirmed
	Total	2,15,750 rounded to 2,16,000	2,25,750 rounded to 2,26,000	Enhanced by Rs.10,000/-

8.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,16,000/- is hereby enhanced to Rs.2,26,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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 along with interest and costs now determined by this Court, 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 is permitted to withdraw the enhanced award amount along with



interest and costs, less the amount if any, already withdrawn.
No costs.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rst/gbi

To

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

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

+1 cc to Mr.A.N.Viswanatha Rao Advocate sr22278

C.M.A.No.384 of 2017

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