

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1074 of 2016

C.Durga Bai

.. Appellant/Petitioner

Vs.

1.Karunakaran

2.M/s.Reliance General Insurance Co. Ltd.

Legal Department, "Rai's Tower"

Plot No.2054, 2nd avenue, 2nd floor

(Next to Senthil Nursing Home)

Anna nagar, Chennai-600 040.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2015 made in M.C.O.P.No.1403 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant : Mr.A.Babu

For R2 : Mrs.C.Harini for
Mr.N.Vijayaraghavan

R1: Exparte before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 29.06.2015 made in M.C.O.P.No.1403 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

2.The appellant is claimant in M.C.O.P.No.1403 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, 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 05.08.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.55,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was working as sub-staff in United India Insurance Company, Poonamallee high road, Chennai and was earning a sum of Rs.15,000/- per month. The appellant sustained injury on her back of spine causing ligamented injury over the spine. She has taken treatment as in-patient in the hospital from 05.08.2012 to 10.08.2012. She examined the Doctor as P.W.2, who assessed the disability of the appellant as 50% and marked Ex.P12 disability certificate to prove the same. Due to the injuries, the appellant could not continue her job. The Tribunal has not awarded any compensation towards disability, attendant charges, pain & suffering, transportation, loss of amenities, medical expenses, loss of income and damage to clothes, but awarded only a lumpsum amount of Rs.55,000/- as compensation and prayed for enhancement of compensation.

6.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant sustained only simple injuries. She has taken treatment as in-patient in the hospital only for six days. P.W.2 is not the Doctor who treated the appellant. The appellant has not proved that she suffered loss of earning capacity. The Tribunal after considering all the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the contention of the appellant that in the accident, she sustained injury on her back of spine causing ligament injury over the spine. She has taken treatment as in-patient in the hospital from 05.08.2012 to 10.08.2012. She examined one Dr.Saichandran as P.W.2, who assessed the disability of the appellant as 50% and marked Ex.P12/disability certificate to prove the disability sustained by the appellant. The appellant has also produced Ex.P6/medical bills for Rs.28,532.45. The Tribunal has not awarded any compensation towards medical bills and disability by considering Ex.P6/medical bills and Ex.P12/disability certificate. Admittedly, the 2nd respondent/Insurance Company has not denied that the appellant took treatment as in-patient from 05.08.2012 to 10.08.2012 and has not produced any document to disprove Ex.P12. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, the appellant is entitled to compensation under different heads and therefore, the lumpsum of Rs.55,000/- awarded by the Tribunal as compensation is hereby set aside. P.W.2/Doctor has assessed the disability of the appellant as 50% and therefore, the appellant is entitled to compensation for 50% disability at the rate of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.1,50,000/- (Rs.3,000/- X 50%) is awarded towards disability. A sum of Rs.25,000/-, Rs.10,000/-, Rs.10,000/-, Rs.10,000/-, Rs.30,000/-, Rs.10,000/- and Rs.1,000/- are awarded towards pain & suffering, attendant charges, extra nourishment, transportation, medical bills, loss of amenities and damage to clothes. The appellant has not produced any document to show that she was on loss of pay during and after treatment period. Therefore, the appellant is not entitled to any compensation towards loss of income. 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)	Award confirmed or enhanced or granted or reduced
	Lumpsum compensation	Rs.55,000	-	Set aside
1.	Disability	-	1,50,000	Granted
2.	Pain and suffering	-	25,000	Granted

3.	Attendant charges	-	10,000	Granted
4.	Extra nourishment	-	10,000	Granted
5.	Transportation	-	10,000	Granted
6.	Medical bills	-	30,000	Granted
7.	Loss of amenities	-	10,000	Granted
8.	Damage to clothes	-	1,000	Granted
	Total	Rs.55,000/-	Rs.2,46,000/-	Enhanced by Rs.1,91,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.55,000/- is hereby enhanced to Rs.2,46,000/- 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 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. No costs.

-s/d-

सत्यमेव जयते Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The V Judge

The Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

Copy to

The Section Officer

V.R.Section

High Court, Chennai.

+1 cc to Mr.A.Babu Advocate sr7339

+1 cc to M/s.M.B.Gopalan Associates sr7340

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