

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.10.2020	Pronounced on: 22.10.2020
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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.2484 of 2015

Tmt.Gairammal

... Appellant/Petitioner

Vs

1.S.Raghu

2.National Insurance Co.Ltd.,
No.751, III Floor,
Anna Salai,
Chennai-2

...Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.07.2013 and made in M.A.C.T.O.P.No.2171 of 2012 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra for
Mr.K.Rajeshwaran

For 1st Respondent : No appearance
For 2nd Respondent : Mr.S.Vadivel

J U D G M E N T

(The case has been heard through video conference)

This appeal is filed by the injured claimant being not satisfied with the compensation awarded by the Tribunal.

2. The case of the appellant is that on 08.04.2012, at about 18.30 hours while he was walking along the E.C.R. road, Injambakkam near Amaithi Koil from East to West direction a motorcycle bearing registration No.TN 20 BY 5481 driven rash and negligently came from South to North direction and dashed against the appellant/claimant. In the said accident, the claimant sustained fracture of left leg bone and deep lacerated wound on left eyebrow.

3. The claim was contested by the Insurance Company on the ground that the motorcycle rider had no valid driving license and therefore for violation of policy condition, they are not liable to indemnify its owner. The manner of accident and the earning capacity of the claimant denied and the claim was put to strict proof of same with documentary evidence. The Tribunal considering the disability certificate and discharge summary assessed 50% disability for the fracture of left leg Tibia Fibula bone. Being a construction worker, the claimant income was fixed as Rs.4,500/- per month and for the loss of income for a period of six months a sum of Rs.27,000/- has been awarded. Besides, Rs.25,000/- has been awarded towards pain and suffering. In total the award of compensation under conventional and other non conventional heads, the Tribunal has fixed the compensation at Rs.1,88,300/-.

4. In the appeal, it is contended that the injured was 38 years old at the time of accident earning Rs.400/- per day. Therefore, award of Rs.27,000/- under the loss of income is very less. In the accident, the claimant has sustained fracture of both left leg and deep lacerated wound on left eyebrow measuring 5cm x 3cm x 5cm, the scare has caused deformity and disfigurement of face. Several sutures were done at eyebrow. The claimant due to damage of muscle of her left leg ankle limping and could not move without assistance. The Tribunal has not considered this facts and awarded only Rs.2,000/- for the attender charges. Therefore, it is sought to be enhanced.

5. The learned counsel appearing for the respondent/Insurance Company would submit that though there was no evidence to show that the claimant have income and lost her income during the treatment period, the Tribunal has fixed the monthly income of the claimant notionally at Rs.4,500/- p.m., and awarded Rs.27,000/- under the head of loss of income for six months. For the fracture on the left leg and lacerated wound on the left eyebrow, the Tribunal has assessed the disability at 50% and has awarded Rs.1,00,000/-. Therefore, the learned counsel would contend that the award of the Tribunal is fair and adequate commensurating the loss.

6. On perusing the records, this Court finds that the Tribunal has not awarded any compensation for the disfigurement and disformity sustained by the claimant due to suturing done at eyebrow, though under the other heads, the claimant has been adequately compensated. Therefore, a sum of Rs.15,000/- is awarded for the scare caused due to suturing leading to disfigurement of face. Accordingly, the award of Rs.1,88,300/- granted by the Tribunal is enhanced to Rs.2,03,300/-, which is rounded of Rs.2,03,500/-.

7. The respondent/Insurance Company is directed to deposit the enhanced compensation amount with interest at the

rate of 7.5% per annum from the date of numbering the claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same on filing proper petition.

8. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accident Claims Tribunal,
VI Judge, Small Causes Court,
Chennai.

2.The Section Officer
V.R.Section, High Court, Madras.

C.M.A.No.2484 of 2015

GMR(CO)
RMP(29/04/2021)