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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:05.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2609 of 2015

A.Rani

.. Appellant /Claimant

/versus/

1.M.Kanniammal

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

2.New India Assurance Co.Ltd.,
No.45, Moore Street,
Chennai-1.

.. Respondents /Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.11.2014 and made in M.A.C.T.O.P.No.3388/2013 on the file of the Motor Accident Claims Tribunal and III Court of Small Causes, Chennai.

For Appellant :Ms.A.Subadra for
M.s M.Malar

For Respondents :Mr.G.Udaya Sankar for R2
R1-Exparte

J U D G M E N T

(The case has been heard through Video Conferencing)

This appeal is preferred by the appellant/claimant against the award passed by the Tribunal seeking enhancement of compensation for the injury sustained in the road accident held on 29.04.2013.

2.According to the claimant/appellant, while she was walking along the road at Rajiv Gandhi Road, opposite of Agasthiya Hotel, Chozhiganallur, a motor cycle bearing Reg.No.TN 07 BH 4026 rash and negligently hit the claimant/appellant causing



severe injury. The claimant was admitted in CMO Global Hospital and treated as in-patient for 9 days i.e. from 29.04.2013 to 07.05.2013. A claim petition for Rs.10,00,000/- was filed against the vehicle owner and its insurer.

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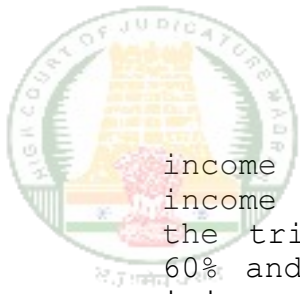
3. In the counter filed by the Insurance Company, they resisted the claim on the ground that the rider of the two wheeler had no valid driving license and therefore, the Insurance Company is not liable to indemnify the vehicle owner. Besides the claim of the insured was also resisted by the Insurance Company on the ground that it is exorbitant. The Tribunal, on considering the evidence placed before it, namely, discharge summary Ex.P5 and disability certificate Ex.P11 found that in the accident, the claimant had sustained traumatic brain injury, left temporal contusion, right occipital bone fracture and fracture for both bone of forearm. The Doctor, who clinically examined the claimant, has issued disability certificate-Ex.P11 that the injury sustained by her has caused at 75% partial permanent disability. The Tribunal fixed at 60% and awarded compensation of Rs.2,27,517/-.

4. The learned counsel appearing for the appellant/claimant in support of the appeal seeking enhancement would submit that the claimant was working as a Helper in a Private Firm at Chennai and earning a sum of Rs.7,000/- per month. The injury sustained by her has caused functional disability to her and due to her disability, she has lost her earning permanently. Therefore, the Tribunal ought to have applied the multiplier. Further, towards loss of income the award of the Tribunal is very less which has to be enhanced.

5. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the nature of the injury as shown in the discharge summary does not reflect that it will cause any functional disability to the claimant. PW-2-Dr.Thiagarajan, has over estimated the disability and has spilt up the disability in to two parts to assess 75% partial permanent disability. The Tribunal had on the basis of the medical records fixed the disability at 60% (25% for haemorrhage and contusion and 35% for both bones of forearm), which is reasonably fair and adequate.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent. Perused records.

7. On going through the evidence and weighing the submissions of the respective learned counsels, this Court finds that the claimant/appellant has not produced any document to show her income. Therefore, the Tribunal has tentatively fixed her



income as Rs.5,000/- per month and compensated her for loss of income for a period of four months. Regarding the disability, the tribunal has assessed the partial permanent disability at 60% and awarded Rs.1,20,000/-. The injuries are not scheduled injury and there is no evidence to show that the injury has caused functional disability to the claimant. It is not a fit case to apply multiplier.

8.This Court is of the view that a sum of Rs.2000/- per percentage awarded for the disability caused for the accident occurred on 29.04.2013 has to be re-fixed as Rs.3000/- per percentage. Accordingly, the award has to be revised.

9.However, this appeal is partly allowed fixing the compensation for the injury as below:-

Sl. No.	Compensation under various heads	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Confirmed / Reduced/
1.	Loss of income	20,000-00	20,000-00	Confirmed
2.	Transport to Hospital	5,000-00	5,000-00	Confirmed
3.	Extra Nourishment	7,000-00	7,000-00	Confirmed
4.	Damage to clothing	500-00	500-00	Confirmed
5.	Medical Expenses	25,017-00	25,017-00	Confirmed
6.	Loss of amenities	10,000-00	10,000-00	Confirmed
7.	Pain and suffering	40,000-00	40,000-00	Confirmed
8.	Disability at 60%	1,20,000-00 (60%x2000)	1,80,000-00 (60%x3000)	Enhanced
Total		2,27,517-00	2,87,517-00	Enhanced

10.The Award of the Tribunal is enhanced from Rs.2,27,517-00 to Rs.2,87,517-00. The claimant is entitled to Rs.2,87,517-00 as compensation with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation. The 2nd respondent/Insurance Company is directed to deposit the award money, less the amount already deposited, if any, within a period of six weeks from the date of the award. On such deposit, the claimant/appellant is permitted to withdraw the award amount, on filing appropriate application before the Tribunal. The order of the Tribunal directing the Insurance Company to pay the award money to the claimant and recover it from the owner of the vehicle is confirmed.



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11. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.

Copy to:
The Section Officer,
V.R.Sectin, High Court, Madras-104.

+1cc to M/s.M.Malar, Advocate, S.R.No.35941
+1cc to Mr.G.Udaya Kumar, Advocate, S.R.No.35994

C.M.A.No.2609 of 2015

SSV(CO)
CB(25/08/2021)