

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.436 OF 2016

Thylammal

...Appellant/
Petitioner

/versus/

1.Kalaiselvi

2.Reliance General Insurance Co.Ltd.,
1st Floor, Geejay Arcade,
141/71, Tiruvenkateswamy Road West,
R.S.Puram, Coimbatore.

...Respondents/
Respondents

Prayer:

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in M.C.O.P.No.433 of 2010 dated 06.06.2014 of the file of the Motor Accidents Claims Tribunal, Sub Judge, Sankari.

For Appellant : Mr.Arthanareeswaran
for Mr.C.Paraneedharan

For Respondents : Ex parte for R1
Mr.S.Arun Kumar for R2

J U D G M E N T

(The case has been heard through video conference)

The claimant not being satisfied with the award passed by the Tribunal has filed this appeal seeking enhancement of compensation.

2. The claimant who was aged 53 years old as per the claim petition and 60 years old as per the wound certificate sustained fractured in the road accident occurred on 09.05.2010. Alleging that the accident has occurred due to negligence of the motorcycle rider, the claim petition was filed against the owner of the motorcycle bearing registration No.TN.34 K 4855 and the

insurer of the vehicle. The disability certificate given by the doctor, who was examined as PW.2 indicates that the claimant has sustained 40% permanent physical disability. The nature of the injury is not specifically mentioned in the claim petition. However the doctor who has issued the disability certificate has stated that it was fracture in the left hip and femur bone.

3. The Tribunal taking note of the disability certificate has awarded Rs.80,000/- under the head of grievous injury and Rs.9,000/- for the loss of income during the treatment period; Rs.20,000/- for medical expenses; Rs.5,000/- for nutritious and Rs.5,000/- for transport; in all a total sum of Rs.1,25,000/- was awarded as compensation.

4. The appeal is filed for enhancement alleging that the Tribunal ought to have awarded fair compensation and what awarded is not just and reasonable

5. The learned counsel for the 2nd respondent/Insurance Company would submit that the claimant at the time of accident was 60 years old and she sustained mild swelling over the upper part of the body. According to the claimant these injuries are temporary in nature and the Tribunal has rightly awarded a fair compensation.

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

7. On perusing the exhibits relied by the claimant particularly the wound certificate, discharge summary, disability certificate and the ocular evidence of PW.2, this Court finds that the award is substantially fair and reasonable under all the given heads except the pain and suffering and attender's charge. Since the claimant has crossed 60 years at the time of accident. Therefore in addition to Rs.1,25,000/- awarded by the Tribunal a sum of Rs.9,000/- (3,000x3) is awarded under the head of attender's charge and a sum of Rs.16,000/- is awarded for pain and suffering. The compensation awarded by the Tribunal is modified and enhanced from Rs.1,25,000/- to Rs.1,50,000/-

8. The Tribunal has considered the fact that the motorcycle rider had no driving license and therefore liberty has been given to the Insurance Company to pay the award amount to the

claimant and recover it from the vehicle owner. The said liberty is confirmed.

9. The Insurance Company is directed to deposit enhanced award amount of this Court with interest at the rate of 7.5% p.a., within a period of twelve weeks from the date of receipt of copy of this order, less the amount already deposited if any. On such deposit, the claimant is permitted to withdraw the same on filing appropriate petition, less the amount already withdrawn by him if any.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpl

To

The Motor Accident Claims Tribunal,
Sub Judge, Sankari.

Copy To
The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.31465

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CNR(CO)
CS/07/05/2021

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