

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2595 of 2019

D.Devagi

.. Appellant/Petitioner

vs.

1. G.Maniarasan

(Since R1 remained exparte before there
Tribunal has presence may be dispensed with)

2. United India Insurance Company Limited,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road,
Chennai-600 006.

.. Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2018 passed in M.C.O.P. No.6544 of 2014 on the file of the learned Special Sub Judge No.1, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent No.1 : Ex-parte

For Respondent No.2 : Ms.R.Vijayakamala

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J U D G M E N T

The judgment and decree dated 25.10.2018 passed in M.C.O.P. No.6544 of 2014 by the learned Special Sub Judge No.1, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant, who is the appellant herein, filed the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

3. The accident occurred on 18.05.2014 at about 07.15 Hours at GST Road, Vallanchery Junction near Munish Tea Stall. The appellant-claimant was aged about 65 years and it is stated in the claim petition that she was working as a Cook and was earning a sum of Rs.10,000/- per month. The Guduvanchery Police Station registered a case in Crime No.516 of 2014.

4. The appellant-claimant sustained head fracture and multiple injuries all over the body.

5. The claim petition was filed by the appellant-claimant before the Tribunal.

6. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties.

7. The Tribunal considered the evidences as well as the documents and arrived a conclusion that the driver of Sedan Maxi Cab bearing Registration No.TN-20-CY-5766 is responsible for the accident. Consequently, the second respondent-Insurance Company is liable to pay the compensation.

8. The Tribunal relied on the oral evidence of PW-1 as well as the First Information Report (FIR) Ex.P-1. The second respondent-Insurance Company has not produced any contra evidence to rebut the oral evidence of PW-1 and the FIR Ex.P-1. Thus, the Tribunal arrived a conclusion that the driver of the Maxi Cab is responsible for the accident and accordingly, the negligence aspect was fixed on the driver of the Maxi Cab.

9. Regarding the quantum of compensation, the learned counsel appearing on behalf of the appellant-claimant reiterated that the reduction of disability percentage from 15% to 5% is improper. A qualified Doctor assessed the disability of the appellant-claimant as 15%. The appellant-claimant sustained head injuries and therefore, the disability percentage ought not to have reduced by the Tribunal. This apart, a sum of Rs.3,000/- is fixed per percentage of disability, which is on the lower side and not in commensuration with the cost index of the particular year of the accident occurred. Even under other heads, compensation is to be enhanced.

10. The learned counsel for the appellant-claimant solicited the attention of this Court with reference to the compensation granted under other heads and made a submission that the total compensation is to be enhanced in all respects.

11. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions raised on behalf of the appellant-claimant by stating that the injuries sustained by the claimant are not so serious in nature and there is no surgery or fracture. The Doctor is a stock witness and the same cannot be relied upon as a whole. Thus, the Tribunal has considered the facts and circumstances and fixed the disability at 5%. A sum of Rs.3,000/- per percentage is reasonable and the medical expenses of Rs.10,920/- met out by the appellant-claimant was also granted. This being the factum, the Tribunal has granted reasonable compensation and no enhancement needs to be made and consequently, the Civil Miscellaneous Appeal is to be dismissed.

12. This Court is of the considered opinion that undoubtedly, the disability percentage was not assessed by the competent Medical Board. The Doctor assessed the disability at 15%. There is no evidence to establish that the said Doctor has given complete treatment to the appellant-claimant. Under those circumstances, some reductions are being done in all such cases by the Motor Accident Claims Tribunal. However, in the present case, the appellant-claimant sustained some head injuries. Though there is no serious injury, the injury was sustained on the head of the appellant-claimant. Therefore, the disability percentage granted by the Tribunal is to be increased from 5% to 10% and the said increase would be appropriate for the purpose of quantifying the compensation.

13. This apart, a sum of Rs.3,000/- per percentage is also not in commensuration with the cost index of the year of the accident. Thus, a sum of Rs.3,000/- per percentage is increased to Rs.4,000/- per percentage. Accordingly, the compensation awarded by the Tribunal stands modified as detailed hereunder:-

	Rs.
For Disability (Rs.4,000/-x10)	40,000/-
For Pain and Sufferings	15,000/-
For Extra Nourishment	5,000/-
Transportation Charges	3,000/-
Medical Bills	10,920/-

For Attender Charges	5,000/-
Loss of Earning	10,000/-
Loss of future prospects	10,000/-

Total	Rs.98,920/-
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Thus, the appellant/claimant is entitled for a total compensation of Rs.98,920/- with accrued interest at the rate of 7.5% per annum.

14. The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant/claimant is permitted to withdraw the same by filing an appropriate application before the Tribunal and payments are to be made through RTGS.

15. Accordingly, the judgment and decree dated 25.10.2018 passed in M.C.O.P. No.6544 of 2014 by the learned Special Sub Judge No.1, Special Sub Small Causes Court No.1-cum-Motor Accidents Claims Tribunal, Chennai stands modified and consequently, CMA No.2595 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Svn

To

The Motor Accident Claims Tribunal,
Special Sub Judge No.1,
Special Sub Small Causes Court No.1
-cum-Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Ms.M.Malar, Advocate, S.R.No.31744.

CMA No.2595 of 2019

KJ(CO)
CSR 28.04.2020



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