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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3561 of 2019

Yuvan Juliet,
D/o. F.Thomas,
No.6, E Block,
Old Bus Stand,
Shenoy Nagar,
Chennai-600 030.

... Appellant

Vs.

1. G.Munusamy,
No.33, Devi Karumari Amman Nagar,
Korukkupet,
Chennai-600 021.

2. Chola mandalam MS General
Insurance Company Limited,
No.1, Village Street,
Wajeeva Corporate Centre,
III Floor, Chennai-600 034.

... Respondents

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

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree passed in M.C.O.P. No.4143 of 2012, dated 28.02.2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant	:	Mr.F.Terry Chella Raja
For Respondents	:	R1 - exparte
		Ms. Harini for
		M/s. M.B.Gopalan Associates
		for R2

J U D G M E N T

The claimant, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal/V Court of Small Causes, Chennai in MCOP No.4143



of 2012, has filed the present Civil Miscellaneous Appeal before this Court.

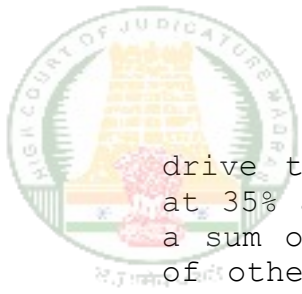
2. The brief facts leading to the filing of this Civil Miscellaneous Appeal is as follows :

On 09.08.2012, at about 05.10 a.m., while the claimant was travelling as a passenger along with her parents in an auto bearing Regn. No.TN-05 W-6789 proceeding towards Shenoy Nagar from Egmore Railway Station, a car bearing Regn. No.TN-07-AW-5837 owned by the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against the auto, in which the appellant has sustained a fracture in the medial margin of right iliac bone and injuries all over the body. Immediately, she was taken to the Kilpauk Medical College Hospital, Chennai, she has undergone a surgery and she was in the hospital as inpatient from 09.08.2012 to 17.08.2012. At the time of accident, the claimant was 19 years old and studying First year graduate course. Due to the impact of injury sustained in the accident, she was not able to walk properly and she was not able to claim the stairs and discharge her duties as before. For the injuries sustained in the accident, claiming a compensation of Rs.8 lakhs, she has filed the claim petition before the Tribunal.

3. The 1st respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition on the ground that the accident was taken place due to the rash and negligent driving of the driver of auto. Hence, no negligence could be fixed on the insurance company. According to them, the compensation claimed by the claimant is highly excessive and speculative.

4. Before the tribunal, the Appellant/claimant examined herself as P.W.1 and the Doctor was examined as P.W.2 and marked as many as 10 documents as Ex.P1 to P10. On the side of the respondents, no witness was examined and no document was marked.

5. The Tribunal, after considering both the oral and documentary evidence, has held that the accident was taken place due the rash and negligent driving of the driver of a car. In respect of quantum of compensation, P.W.2, Doctor had assessed the disability at 45% on the ground that after treatment, due to the fracture in hip bone, she was not able to walk, climb and sit cross legged and to squat. She is also find difficulty to



drive two wheeler. The Tribunal, however, fixed the disability at 35% and granted a sum of Rs.3000/- per percentage and awarded a sum of Rs.1,05,000/- under the head of disability. In respect of other heads, the Tribunal has awarded a sum of Rs.25,000/- towards transportation and nourishing food, a sum of Rs.2,250/- towards attender charges, a sum of Rs.25,000/- towards damages for pain, suffering and trauma, and a sum of Rs.25,000/- towards loss of amenities. Totally, the Tribunal has awarded a sum of Rs.1,82,250/- as compensation. Not being satisfied with the same, the claimant is before this Court with this Appeal.

6. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as 2nd respondent and perused the records.

7. The appellant was a college going girl, aged about 19 years at the time of accident and doing her First year Degree course. From the perusal of records, it could be seen that she has suffered the following injury :-

"injuries = pelvic injury = x-ray right illiac bone fracture on medial margin; posterior to right illiac bone, sacro illiac joint intact; treated with antibiotics, analgesics and continuous treatment."

The Doctor was examined as P.W.2 and the observation made by the Doctor in the disability certificate, which was marked as Ex.P9 reads as follows :-

"post traumatic Arthritis of Pelvic Joint on right sctro illiac portion, stiffness and therefore, unable to walk, to climb and to sit cross legged and to squat, fracture is malunited. She finds it difficult to drive two wheeler."

The Doctor, P.W.2 had assessed the disability at 45%. The evidence of P.W.2 was not seriously challenged before the Tribunal. However, the Tribunal had fixed the disability at 35% without any reason whatsoever. In the above circumstances, as the medical report clearly shows that the claimant has suffered a serious fracture in the hip bone and she has also suffered partial permanent disability, this Court accepts the disability assessed by the Doctor and fixed the disability at 45%. As the accident has been taken place in the year 2012, a sum of Rs.3000/- was granted per percentage of disability, which comes to Rs.1,35,000/-. So far as other heads are concerned, considering the period of hospitalisation and subsequent



treatment taken by the appellant, towards attender charges a sum of Rs.25,000/- is granted instead of Rs.2,250/- awarded by the Tribunal, towards pain and sufferings, a sum of Rs.50,000/- is granted instead of Rs.25,000/- awarded by the Tribunal. In respect of loss of amenities, the Tribunal has only granted a sum of Rs.25,000/-. Considering the age of appellant, she was 19 years old, she had suffered a fracture in hip bone, which is mal-united and still, she is having problem in walking and also climbing stairs, definitely, it would affect her marriage prospects also. In the said circumstances, towards loss of amenities and marriage prospects, this Court is inclined to grant a sum of Rs.1,00,000/- instead of Rs.25,000/- awarded by the Tribunal. In view of the above, the compensation awarded by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Towards transportation and nourishing food	25,000	25,000	confirmed
2	Attender charges	2,250	25,000	enhanced
3	Disability	1,05,000	1,35,000	enhanced
4	Damages for pain, suffering and trauma	25,000	50,000	enhanced
5	Loss of amenities and marriage prospects	25,000	1,00,000	enhanced
	Total	1,82,250	3,35,000	enhanced

Thus, the appellant is entitled to get a sum of Rs.3,35,000/-, instead of Rs.1,82,250/- awarded by the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,82,250/- is hereby enhanced to Rs.3,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
V Small Causes Court, Chennai.

+1CC to M/s.M.Malar, Advocate, Sr.No.41139

C.M.A.No.3561 of 2019

RR (CO)
K.RK. (08.10.2021)