

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2993 of 2019

Uma Mageswari

.. Appellant/Claimant

Vs.

1. V.Vignesh

2. Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
Nungambakkam, Chennai - 6. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 28.02.2019, made in M.C.O.P.No.8797 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Ms.Revathy
for Mr.R.Nalliyappan

For Respondent 2 : Ms.C.Bhuvanasundari

J U D G M E N T

Not being satisfied with the compensation awarded by the Motor Accident Claims Tribunal, the appellant/claimant is before this Court with this appeal seeking enhancement of compensation.

2. According to the appellant / claimant, on 21.11.2015 at 20.00 hours, while she was walking along the R.G.Salai in front of Kandanchavadi Arulmiku Sri Kaliyamman Koil, a motorcycle bearing Registration No.TN-66-M-2984, owned by the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the appellant/claimant. In the said accident, she suffered multiple fractures and she was admitted in the Government Royapettah Hospital as inpatient from 21.11.2015 to 08.12.2015 and she also underwent surgery. The doctor assessed the disability of the appellant/claimant at 35%. At the time of the accident, the appellant was working as a house keeper and she was earning a sum of Rs.15,000/- per month and due to the accident, she could not able to discharge her duties like before and hence she filed the claim petition seeking compensation of Rs.8,00,000/-.

3. The first respondent owner of the vehicle remained ex parte and the second respondent / insurance company contested the claim petition on the ground that the accident has taken place due to the negligence of the appellant/claimant and on the date of accident there is no valid licence for the rider of the two wheeler and hence the insurance company is not liable to pay compensation. That apart, the income of the appellant / claimant was also not proved.

4. In order to prove the claim, the appellant/claimant, examined herself as P.W.1 and examined one Dr.M.Saravana Bavanantham as P.W.2, who speak about her disability. She has also marked as many as seven documents as Exs.P1 to P7. On the side of the respondents no witness was examined and no document was marked.

5. The Tribunal after considering the materials available on record came to the conclusion that accident took place due to the rash and negligent driving of the driver of the two wheeler and as the two wheeler was insured with the second respondent, fixed the liability on the insurance company. So far as the quantum of compensation is concerned, the Tribunal fixed the disability at 10% and awarded a sum of Rs.30,000/- towards disability and fixed the monthly income at Rs.6,000/-. Further, the Tribunal awarded the compensation on various heads as follows:

Sl.No	Head	Amount
1	Disability	Rs.30,000
2	Pain and Sufferings	Rs.20,000
3	Extra Nourishment	Rs.10,000
4	Transport Charges	Rs.5,000
5	Attender Charges	Rs.4,500
6	Loss of Earnings	Rs.12,000
7	Loss of Future Prospects	Rs.20,000
	Total Compensation is fixed at	Rs.1,01,500

Being aggrieved on the compensation awarded by the Tribunal at Rs.1,01,500/-, the appellant / claimant has filed the present appeal seeking enhancement.

6. The learned counsel appearing for the appellant/claimant would submit that so far as the disability is concerned, the claimant examined the doctor and also produced medical records to show that she suffered disability at 35%, but the Tribunal without any reason whatsoever fixed the disability at 10%. So far as other heads are concerned, the learned counsel contended that the compensation was not

just and adequate and sought for enhancement.

7. The learned counsel appearing for the second respondent / insurance company contended that so far as the disability is concerned, the doctor's evidence was not believed by the Tribunal. There is no evidence to show that she suffered permanent disability, which requires compensation. So far as other heads are concerned, the Tribunal taking into account the evidence available on record has rightly fixed the compensation amount and there is no reason to interfere with the award of the Tribunal.

8. I have considered the rival submissions and also perused the records carefully.

9. The primordial contention of the learned counsel appearing for the appellant/claimant is that while there are materials available on record to establish that the appellant/claimant has suffered 35% disability, the Tribunal has fixed the disability at 10% without any reason. I have gone through the records and there are ample evidence to establish her disability. The appellant/claimant has produced the disability certificate (Ex.P6), the accident report (Ex.P1), discharge summary (Ex.P2) and she has also examined the doctor as P.W.2, who after assessing all the materials has given a opinion that the appellant/claimant suffered partial permanent disability at 35%. There is no contra evidence to disprove the same. However, the Tribunal without assigning any reason whatsoever, simply fixed the disability at 10% without any basis whatsoever. Hence, I am of the view that based on the uncontroverted evidence available on record, the disability of the deceased can be fixed at 35% and she is entitled to get a sum of Rs.1,05,000/- towards disability instead of Rs.30,000/- awarded by the Tribunal. So far as other heads of pecuniary and non pecuniary damages are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

10. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Disability	30,000	1,05,000	Enhanced
2.	Pain and Sufferings	20,000	20,000	Confirmed
3.	Extra Nourishment	10,000	10,000	Confirmed
4.	Transport Charges	5,000	5,000	Confirmed
5.	Attender Charges	4,500	4,500	Confirmed
6.	Loss of Earnings	12,000	12,000	Confirmed

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
7.	Loss of Future Prospects	20,000	20,000	Confirmed
	Total	1,01,500	1,76,500	Enhanced by Rs.75,000

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,01,500/- is hereby enhanced to Rs.1,76,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second 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 to the credit of M.C.O.P.No.8797 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Small Causes Court, Chennai.

2. The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.2993 of 2019

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GMV(07/05/2021)

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