

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3399 of 2019

V.Krishnaveni

... Appellant/Petitioner

vs.

1 S.Clement David (Set exparte in the Trial Court)

2 ICICI Lombard GI Insu. Co. Ltd.

Harihant Plaza, 1st Floor,

No.83/84, Walltax Road,

Chennai 600 003.

... Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.03.2019 passed in M.C.O.P. No.1530 of 2015 on the file of the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.K.Suriyanarayanan
for M/s.P.T.Saleem Fathima

For Respondent-1: Ex parte

For Respondent-2: M/s.R.Sreevidhya

J U D G M E N T

The present Civil Miscellaneous Appeal is filed against the judgment and decree dated 04.03.2019 passed in M.C.O.P. No.1530 of 2015 by the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

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

3. The learned counsel appearing on behalf of the appellant-claimant mainly contended that the compensation awarded by the Tribunal is inadequate, not in commensurate with the gravity of the injuries sustained as well as the agony underwent by the Appellant-claimant due to the accident. The

disability which was fixed as 20% by the Doctor in a reasonable manner has not been properly compensated. A sum of Rs.3000/- for one percentage is granted and the accident occurred during the year 2015. Thus, enhancement is to be made for disability as well as the loss of income and other heads also.

4. The learned counsel appearing on behalf of the second respondent/Insurance company raised objection stating that the Tribunal has granted reasonable compensation. The Tribunal considering the nature of injuries sustained by the appellant-claimant and in view of the fact that the Doctor assessed the disability as 20%, the Tribunal has granted the compensation based on the disability assessed by the Doctor. Therefore, there is no perversity or error in the award passed by the Tribunal. Thus, the Civil Miscellaneous Appeal is liable to be dismissed.

5 The accident occurred on 05.02.2015 at about 18.30 hours at Ambattur Estate road, near the junction of 100 Feet Jawaharlal Road opposite to E.B. Office. Tirumangalam Traffic Investigation, Villivakkam Police station registered a case in Crime No.53 / TM 3 / 2015.

6. The appellant-claimant was a pedestrian while crossing the Ambattur Estate road, opposite to E.B. office, the motorcycle bearing Registration No.TN-02-AY-6664 hit the appellant-claimant and due to that the appellant/claimant sustained grievous injuries.

7. The claim petition was filed by the appellant-claimant and the second respondent/Insurance Company defended the claim petition.

8. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced.

9. As far as the negligence aspect is concerned, the Tribunal has considered the copy of the F.I.R. Ex.P1 as well as the evidence of P.W.1. Accordingly, the Tribunal arrived a conclusion that the accident occurred due to the rash and negligent driving of the rider/first respondent of the motorcycle bearing Registration No.TN-02-AY-6664 which belongs to the first respondent. Thus, the negligence was fixed on the first respondent and consequently, the Tribunal directed the second respondent-Insurance Company to pay compensation to the appellant-claimant.

10. As far as the quantum of compensation is concerned, the Tribunal has considered the disability certificate. On perusal of the nature of injuries, the Tribunal also arrived a conclusion that the disability of 20% would be reasonable. Thus, accepted the disability certificate as it is and granted compensation. However, the Tribunal has awarded a sum of Rs.3000/- for one percentage and such compensation is on the lower side. In fact, accident occurred during the year 2015 and taking note of the cost index of the year, the Tribunal ought to have granted atleast a sum of Rs.4000/- for one percentage. Accordingly, disability compensation is to be enhanced.

11. As far as the loss of income is concerned, the Tribunal has considered the salary certificate and fixed the salary of the Appellant- claimant as Rs.6500/-. Though the learned counsel appearing on behalf of the appellant-claimant has stated that the salary which was being received by the appellant-claimant was about Rs.10,400/-, the Tribunal has taken a sum of Rs.6,500/- as a monthly salary. This Court is not inclined to go into the salary accepted by the Tribunal.

12. The fact remains that the appellant-claimant sustained grievous injuries and taken treatment as inpatient for about 17 days and thereafter, continued treatment as outpatient. Under these circumstances, the Tribunal ought to have granted loss of income for a period of six months which would be reasonable.

13. Admittedly, the appellant-claimant was working in a private school during that period, she would not have received salary. Thus, six months salary would be appropriate and the same is to be granted towards loss of income. Accordingly, the compensation of Rs.1,99,300/- awarded by the Motor Accident Claim Tribunal, Chennai stands modified as detailed hereunder:

Heads	Amount in Rs.
Disability (4000 x 20)	80,000/-
Pain and Sufferings	25,000/-
Extra Nourishment	5,000/-
Transport to hospital	5,000/-
Damages to clothes	500/-
Attender charges	5,000/-
Medical expenses	79,983/-
Future Medical expenses	5,000/-
Loss of Income (9000 x 6)	54,000/-

Heads	Amount in Rs.
Loss of Amenities	5,000/-
Total :	2,64,483/-

Thus, the appellant-claimant is entitled for a total compensation of Rs.2,64,483/- 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 with accrued interest after deducting the amount already deposited by the Insurance Company before the Tribunal, within a period of 12 weeks from the date of receipt of a copy of the judgment and on such deposit being made, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application before the Tribunal. Payments are to be made through RTGS.

15. Accordingly, the judgment and decree dated 04.03.2019 passed in M.C.O.P. No.1530 of 2015 by the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai, stands modified and consequently, CMA No.3399 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The III Judge,
Small Causes Court-cum- Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.M.Swamikkannu, Advocate Sr.30592

CMA No.3399 of 2019

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srg 22/04/2021