

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HON'BLE Mr.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1691 of 2017

R.Chandraveni

... Appellant/Petitioner

..vs..

1.S.Venkatakrishnan

(set exparte in the trial court)

2. The Oriental Insurance Co.Ltd.,

Motor Third Party Claims,

No.216, Prakasam Salai,

Broadway, Chennai- 600 118.

.... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 9th day of December 2016 made in MACT.OP.No.1843 of 2014 on the file of III Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr. K.Suryanarayanan

For Respondents : Mr.J.Chandran for R2
R1 - Exparte

J U D G M E N T

Aggrieved over the quantum of compensation arrived at by the Tribunal at Rs.2,01,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, the claimant / appellant is before this Court. Since challenge to the appeal is only on quantum, this Court deals only with the quantum arrived at by the tribunal, confirming the negligence aspect.

2. It is the case of the claimant/appellant that while she was walking at Maduravoil Over bridge, the first respondent rode the motorcycle bearing Reg.No.TN-18-T-2998 in a rash and negligent manner and dashed against the claimant, thereby the claimant has sustained fractures and grievous injuries all over the body. Claiming that the respondents are jointly and severally liable to pay compensation, claim petition came to be

filed claiming a sum of Rs.9,00,000/- as compensation. It is the further case of the claimant that she was doing Mason work in the building construction and earning Rs.10,000/- to 12,000/- per month.

3. The age, avocation and the details given by the claimant were disputed by the second respondent in total and contended that the accident had not occurred due to the rash and negligent riding of the motorcyclist/first respondent, but, due to the negligent act of the claimant only.

4. The Tribunal, based on the oral and documentary evidence Exs.P.1 to P.7, has awarded a sum of Rs.2,01,000/- as total compensation payable by the respondents to the claimants under the following heads:

Loss of Income	: Rs. 15,000.00
Transport to Hospital	: Rs. 5,000.00
Extra Nourishment	: Rs. 10,000.00
Damage to Clothing	: Rs. 1,000.00
Pain and Suffering	: Rs. 40,000.00
Damages for Mental and physical shock	: Rs. 10,000.00
Disability 40% @ Rs.3,000/-	: Rs. 1,20,000.00

Total	: Rs. 2,01,000.00

5. Heard both sides.

6. The learned counsel for the appellant has submitted that the Tribunal has erred in taking the disability at 40%, whereas the Doctor P.W.2 has issued Ex.P.6 Disability Certificate at 45%; the Tribunal has reduced the disability to 40% from 45% without any rhyme or reason; further, no amount was awarded towards medical expenses and attender charges and also the amount awarded under other heads are too low. The learned counsel for the appellant further submitted that ample evidence and documents were produced before the Tribunal to prove the age, avocation and income details of the claimant / appellant and hence the award of the Tribunal needs significant enhancement.

7. Per Contra, the learned counsel for the second respondent / Insurer submitted that the Tribunal has taken into consideration each and every aspect and has awarded a sum of Rs.2,01,000/- as total compensation, which is nothing but 'just'; though the Doctor has given the disability certificate certifying that the claimant has suffered disability at 45%, the Tribunal has observed the version made in the cross examination of P.W.2-Doctor wherein he categorically stated that he has not given any treatment to the injured / claimant / appellant and hence the amount awarded under the head 'disability' and other

heads are supported by reasons of the Tribunal. In fine, the learned counsel submitted that the well reasoned award of the Tribunal does not require any interference by this Court.

8. A perusal of the judgment of the Tribunal would go to show that it has taken into consideration the documents, viz, Ex.P.3 O.P.Chits, Ex.P.6 Disability Certificate and Ex.P.7 X-ray, apart from Ex.P.4 Medical Prescriptions and Ex.P.5 Medical Bills and has awarded Rs.10,000/-, Rs.40,000/- and Rs.10,000/- towards Extra Nourishment, Pain and suffering and Mental and Physical shock, which in the opinion of this Court are based on settled principles of law and evidence on record and hence the said sums awarded under these heads are confirmed as such.

9. The Tribunal has taken the disability of the claimant at 40%, but the Doctor has given disability certificate certifying the disability of the claimant at 45%. This Court is of the view that the Tribunal cannot go against the disability certificate issued by the Doctor. Though the Doctor has stated in his evidence that the percentage of disability may vary from doctor to doctor up to 5%, it is not in dispute that the appellant has suffered fracture of upper end tibia, laceration of upper lip and suturing and fracture of upper jaw teeth 2nd incisor and 1st premolar. There is also a description by the Doctor stating that there is widening and malunion of fracture u/3 L tibia, loss of 2 teeth in upper jaw. Under such circumstances, the reduction of disability by 5% cannot be accepted and hence the disability as assessed by the Doctor at 45% has to be taken. If that yardstick is adopted, the amount to be awarded under the head disability would be Rs.1,35,000/- (at the rate of Rs.3,000/- per percentage) and it is awarded accordingly.

10. Further, it is not in dispute that the claimant had taken treatment for quite some time and during that time, the claimant had incurred attendant and medical expenses. But the Tribunal has not awarded any sum towards medical expenses and attendant charges. Taking into consideration of Exs.P-3 and P-4 - OP Chits and the duration of treatment taken, apart from the nature of injury and other circumstances, sums of Rs.4,000/- and Rs.5,000/- are awarded towards medical expenses and attendant charges.

11. The amounts awarded under Transportation expenses, damage to clothes and loss of earning during treatment period at Rs.5,000/-, Rs.1,000/- and Rs.15,000/-, respectively, are quite reasonable and based on conventional methodology and hence the amount awarded under these heads are confirmed as such.

12. In the result, the Civil Miscellaneous Appeal filed by the claimant / appellant is partly-allowed by enhancing the

total compensation from Rs.2,01,000/- to Rs.2,25,000/-, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

13. The second respondent shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the said sum to the Savings Bank Account of the appellant / claimant, through RTGS, within one week thereafter. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

srk

To

1. The III Judge,
Motor Claims Tribunal,
(Court of Small Causes),
Chennai.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.J.Chandran, Advocate SR.No.25826

+1cc to Mr.M.Swamikkannu, Advocate SR.No.25678

C.M.A.No.1691 of 2017

SPD(CO)

GMV(17/04/2021)

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