

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.3899 of 2019

S.Sumathi

..Appellants/Petitioner

vs.

1.S.Ganesh

2.ICICI Lombard General Insurance Co. Ltd.,
Chhotabhai Centre, No.140,
Nungambakkam High Road,
Chennai-600 034.

..Respondents/Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.07.2019 passed in M.C.O.P. No.6314 of 2015 on the file of the learned IV Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondent-1 : No Appearance

For Respondent-2 : Mr.K.Poomalai

J U D G M E N T

The judgment and decree dated 12.07.2019 passed in M.C.O.P. No.6314 of 2015 by the learned IV Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

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

3. The accident occurred on 17.07.2015 at about 09.15 Hours at Ponds Company Over Bridge, GST Road, Pallavaram. The S-13 Chrompet Traffic Investigation Tambaram, Chennai registered a case in Crime No.395/CH3/2015.

4. The claimant was travelling as a pillion rider in the motorcycle bearing Registration No.TN-11-H-4980. Due to the accident, the claimant sustained fracture over ribs and abdomen injury.

5. The claim petition was filed and the second respondent/ Insurance Company defended the claim petition.

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

7. As far as the negligence aspect is concerned, the Tribunal arrived a conclusion that the accident took place only on account of the rash and negligent driving of the motorcycle by its rider.

8. As far as the quantum of compensation is concerned, the Tribunal has taken 15% as disability in spite of the fact that the Doctor assessed the disability as 25%. The treatment record of the claimant issued by the Parvathy Hospital was marked as Ex.P-2. Accordingly, she sustained injuries to chest and abdomen and she had complaints of chest pain on the right side and that air entry was found to be decreased on the right side. The Discharge Summary issued by the Global Health City, Ex.P-3 shows that the claimant had, on the chest, displaced fracture on the right 3rd - 10th ribs, mild haemopneumothorax and right lower lobe contusion. However, the Tribunal has noted that the claimant did not undergo surgery as stated by her in the cross-examination. Thus, the claimant had falsely stated in the cross-examination that she had undergone surgery. As per the medical records, the claimant has not undergone any surgery. Therefore, this Court is of the considered opinion that the disability of 25% fixed by the Doctor is to be considered.

9. The question of application of multiplier would not arise in this case, as the claimant sustained injuries and not undergone any surgery or she is capable of performing her duties. This apart, the claimant is working as Teacher and there is no loss of future income. However, the accident occurred in the year 2015. Thus, a sum of Rs.3,000/- per percentage fixed by the Tribunal, is less and the same is to be enhanced to Rs.4,000/-.

10. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions raised on behalf of the appellant by stating that the injuries are minor in nature. Though the Doctor fixed the disability as 25%, the Tribunal has taken 15% only on the ground that the claimant had not undergone any surgery and further, she has not sustained any loss of income. Therefore, the judgment of the

Tribunal is not in accord with the principles and the Civil Miscellaneous Appeal is to be dismissed.

11. This Court is of the considered opinion that though there is no loss of income, the claimant has met out considerable money towards medical expenses. Therefore, the Tribunal ought not to have reduced the disability percentage. When the medical bills and the treatment taken continuously by the claimant is established, then there is no reason to reduce the disability percentage.

12. This being the factum, this Court is inclined to accept the disability of 25% as fixed by the Doctor in his Disability Certificate. This apart, a sum of Rs.4,000/- per percentage is to be fixed. Accordingly, the total compensation of Rs.5,56,300/- granted by the Tribunal stands modified as detailed hereunder:-

Rs.	
Disability (Rs.4,000/-x25)	1,00,000/-
Medical Expenses	4,05,491/-
Loss of Income	40,000/-
Pain and Sufferings	25,000/-
Transportation Charges	5,000/-
Additional Nourishment	15,000/-
Attender Charges	4,800/-
Loss of Amenities	15,000/-

Total	Rs,6,10,291/-
=====	

Thus, the appellant/claimant is entitled for a total compensation of Rs.6,10,291/- with accrued interest at the rate of 7.5% per annum.

13. 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 entire award amount by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the additional court

fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this judgment and payments are to be made through RTGS.

14. Accordingly, the judgment and decree dated 12.07.2019 passed in M.C.O.P. No.6314 of 2015 by the learned IV Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai stands modified and consequently, CMA No.3899 of 2019 is allowed in part. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Svn
To

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

+1 CC to Mr.K.Poomalai, Advocate sr 29740.

CMA No.3899 of 2019

BR(CO)
SP(30/04/2021)