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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.1297 OF 2013

N.Fathima Begum

...Appellant / Petitioner

..Vs..

1.Ashwin Mahadev

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 1.

...Respondents / Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 8.8.2008 made in M.C.O.P.No.3839 of 2003 on the file of Additional District & Sessions Court, (Fast Track Court-V) (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.R.Ponnusamy for
M/s.Anand & Surya

For Respondent No.2 : Mr.N.Anand
R1 : Notice Dispensed with

JUDGMENT

Brief facts of the claimant's case is as follows:

It is the case of the claimant that on 30.5.2003 at about 8.30 a.m. at G.W.T. Road, Singadivakkam, Kancheepuram, when the petitioner was travelling as a pillion rider in a two wheeler bearing registration No.TN-01-S 7050 driven by one Mohamed Saleemdin proceeding from east to west direction, a Car bearing registration No.MH-01 CA 868 coming from opposite direction in a rash and negligent manner and hit against the motorcycle, thereby caused accident, resulting in the petitioner sustained grievous multiple injuries. She filed claim petition claiming Rs.1,75,000/- as compensation for the injuries sustained by her.

2. On the side of the claimant, P.W.1 to 3 were examined and Ex.P1 to P14 were marked. On the side of the respondents, no oral or documentary evidence placed on record.



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3. The Tribunal, based on the oral and documentary evidence Exs.P1 to P9, has held that the respondents being the owner and Insurer of the offending vehicle are liable to pay compensation to the claimant and awarded Rs.53,000/- as compensation for the injuries sustained by her along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

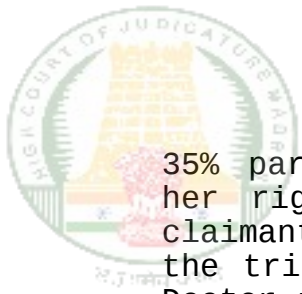
Heads	Amount in Rs.
Permanent disability	30,000/-
Pain and suffering	10,500/-
Loss of leave	10,000/-
Transport to hospital	1,000/-
Extra Nourishment	1,000/-
Medical expenses	500/-
Total :	53,000/-

4. Heard the learned counsel appearing for the claimant/appellant, the learned counsel appearing for the respondent/Insurance Company and perused the materials available on record.

5. According to the counsel appearing for the appellant, due to rash and negligent driving of the offending vehicle, the appellant sustained grievous injuries and she underwent surgery at right ankle and therefore, disability of the appellant was assessed as 35% permanent disability. The appellant was working as Police Constable, claimed Rs.1,75,000/- as total compensation for the permanent disability sustained by her. The appellant also produced oral and documentary evidence before the tribunal. However, tribunal has awarded a meagre amount of Rs.53,000/- along with interest at the rate of 7.5% p.a. According to the appellant, tribunal failed to appreciate the case of the appellant that she suffered 35% disability and she was working as Police Constable. According to him, tribunal has fixed Rs.1000/- per percentage for the disability which is very meagre. Considering the nature of disability, award passed by the tribunal under other heads also not adequate. Therefore, seeks enhancement of compensation.

6. The learned counsel appearing for the respondent/Insurance Company objected for enhancement of compensation and justified the award passed by the tribunal is reasonable and fair and therefore, does not warrant interference by this Court.

7. The contention of the appellant in the instant appeal is that the appellant sustained grievous injuries resulting in



35% partial permanent disability and she underwent surgery at her right ankle. P.W.3 Doctor examined on the side of the claimant, assessed 35% partial permanent disability. However, the tribunal has fixed 30% partial permanent disability. P.W.3 Doctor who examined the victim and submitted a report. But the tribunal without referring any material or any other contra evidence, has fixed the disability at 30% which is incorrect. This Court is of the view that P.W.3 Doctor specialized in this field and therefore, disability assessed by the Doctor as 35% partial permanent disability has to be accepted. The next contention of the appellant is that Rs.1000/- per percentage awarded towards disability is very low, without taking note of the fact that the appellant sustained injuries on the right ankle, she underwent surgery and she was working as Police Constable during relevant point of time. Considering the nature of work and injuries sustained by the appellant at right ankle, it is appropriate for this Court to fix Rs.1500/- per percentage for disability. Insofar as the other heads also, it requires modification. Accordingly, the award of the tribunal is modified as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Permanent disability 35% x Rs.1500/-	30,000/-	52,500/-
Pain and suffering	10,500/-	20,000/-
Loss of leave	10,000/-	10,000/-
Transport to hospital	1,000/-	5,000/-
Extra Nourishment	1,000/-	5,000/-
Medical expenses	500/-	500/-
Loss of earning during treatment period	--	5,000/-
Attendant charges	--	3,000/-
Loss of amenities	--	5,000/-
Total	53,000/-	1,06,000/-

The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

8. The claimant/appellant is entitled to withdraw Rs.1,06,000/- (Rupees one lakh and six thousand only) along with interest at the rate of 7.5% p.a. from the date of petition till realization. The respondent/Insurance company is directed to deposit Rs.1,06,000/- along with interest at the rate of 7.5%



p.a. from the date of petition till realization, within a period of six weeks from the date of receipt of copy of the judgment, after deducting the amount if any, already deposited before the tribunal. On such deposit being made by the respondent/Insurance Company, the claimant/appellant is entitled to withdraw the amount by filing appropriate application.

9. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1.The Additional District & Sessions Court
(Fast Track Court - V)
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Anand & Suryas, Advocate SR.No.13842

+1cc to M/s.N.Anand, Advocate SR.No.13382

Civil Miscellaneous Appeal
No.1297 of 2013

SSD(CO)
RVM(15/09/2021)