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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

C.M.A.No.3320 of 2011

Minor A.R.Ramya

Rep.by N.F.and mother A.R.Pramila

Achamangalam Village & Post

Krishnagiri District.

... Appellant / Petitioner

..Vs..

1.Sree Ramamoorthy

2.The Branch Manager

New India Assurance Company Ltd.,

No.15/1, Arunalpet Branch,

No.6-15-31, Kubera Towers

Arundelpet Main Road,

Guntur, A.P.

... Respondents / Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to prefer the above Civil Miscellaneous Appeal aggrieved by the award and decree dated 05.04.2011 made in MCOP.No.439 of 2006 on the file of the Motor Vehicle Claims Principal District Judge, Krishnagiri.

For Appellant : Mr.Mukund R.Pandian

For Respondents : Ms.Salomi

for Mr.C.Ramesh Babu for R2

R1- Notice unserved

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 05.04.2011 made in MCOP.No.439 of 2006 on the file of the Motor Vehicle Claims Tribunal/Principal District Judge, Krishnagiri.



2. It is the case of the minor appellant/claimant that on 25.09.2004 at about 08.15 pm, the appellant/claimant along with her mother, grandmother and grandfather were travelling in the Maruthi Zen Car bearing Registration No.TN-22-R-0369, which was driven by her father, on Vaniyambadi-Krishnagiri NH Road towards Krishnagiri from Madras. When they were proceeding near Kandiyur Junction Road at Natrampalli bypass, a Lorry, bearing Registration No.AP-07-T-3529 belonging to the first respondent insured with the second respondent, came in a rash and negligent manner in wrong track and hit the Car. Due to the accident, the appellant/claimant and others sustained grievous injuries and his father died on the spot. At the time of the accident, the appellant/claimant was 8 years old and studying 3rd Standard. After the accident, she is not able to sit, stand or walk freely. Hence, she made a claim for a sum of Rs.5,00,000/- as compensation.

3. In order to prove the claim, on the side of of the appellant /claimant, PW1 to PW3 were examined and Exs.A1 to A5 were marked. On the side of the respondents, no oral or documentary evidence have been adduced.

4. The Tribunal after analysing the entire evidence came to the conclusion that the accident was happened due to the rash and negligent driving of the driver of the Lorry and the respondents are liable to pay a sum of Rs.2,14,145/- as compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

Heads	Amount awarded by the Tribunal
Permanent disability (35%)	(2000 x 35) 70,000/-
Medical Expenses	1,11,145/-
Pain and sufferings	20,000/-
Attender charges	4,000/-
Extra Nourishment	6,000/-
Transport charges	3,000/-
Total	Rs. 2,14,145/-



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5. According to the learned counsel for the appellant/claimant, the appellant sustained grievous injuries and she was admitted in the Tirupattur Government Hospital and subsequently she was shifted to CMC Hospital, Vellore. Again she was admitted in a Hospital at Chennai on 17.10.2004 and she underwent surgery on 18.10.2004, thereafter, she was discharged from the Hospital on 22.10.2004. Once again she underwent an operation on 17.04.2006 and discharged from the Hospital on 20.04.2006. PW3, an Orthopaedic Doctor, examined the appellant/claimant and assessed her Permanent Disability at 50% and also issued permanent disability certificate, which was marked as Ex.A38. However, the Tribunal without considering the nature of the injuries suffered by the appellant/claimant and the disability certificate, on its own fixed disability at 35%. Thereafter, the Tribunal by awarding a sum of Rs.2,000/- per percentage of disability, arrived at a sum of Rs.70,000/- [2,000 x 35] under the head "Permanent Disability", which is not sustainable. Further, the amounts awarded by the Tribunal under other heads are also very meagre. Hence, the appellant has filed the present appeal.

6. The learned counsel appearing for the second respondent/ Insurance Company would submit that the Tribunal by fixing permanent disability at 35% has rightly awarded a sum of Rs.70,000/- for Permanent Disability. As far as the other heads are concerned, the Tribunal has rightly fixed the compensation. Therefore, the appeal is liable to be dismissed.

7. This Court considered the rival submissions of both the parties and perused the materials on record.

8. It is the main contention of the learned counsel for the appellant that the Tribunal has fixed only 35% disability and awarded a meagre amount under the head "Permanent Disability". On a perusal of the records, it is seen that PW3, the Doctor after examining the appellant /claimant, assessed the disability at 50% and the appellant also marked the documents viz., Ex.A38, the disability certificate and Ex.A37, X-ray to prove his disability. However, the Tribunal has reduced the percentage of disability to 35% without assigning any proper reason. Hence, this Court is of the view that the assessment of PW3, Doctor is fairly reasonable and this Court accepts the evidence of the Doctor as well the Ex.A-38 disability certificate produced before the Tribunal and



fixes the disability at 50%. Thus, the "Permanent Disability" of the appellant/ claimant is arrived at Rs.1,00,000/- by awarding a sum of Rs.2,000/- per percentage of disability $[2,000 \times 50]$.

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9. Since the appellant/claimant has taken medical treatment for a long time from 25.09.2004, the sum of Rs.1,11,145/- awarded by the Tribunal under the head of "Medical Expenses" is enhanced to Rs.1,45,000/-.

10. Considering the long duration of treatment underwent by the appellant/petitioner, this Court finds that the sum of Rs.20,000/-, Rs.4,000/- and Rs.3,000/- awarded by the Tribunal under the heads "Pain and Sufferings", "Attender Charges" and "Transportation Charges", respectively, appears to be on the lower side and as such, the same are hereby enhanced to Rs.40,000/-, Rs.10,000/- and Rs.5,000/-, respectively.

11. Since no amount was awarded under the head "Loss of Amenities", a sum of Rs.10,000/- is awarded under such head.

12. The sum of Rs.6,000/- awarded by the Tribunal under the head "Extra Nourishment" appears to be just and fair, and hence, the same is confirmed.

13. Thus, this Court has enhanced the compensation amount as follows:

Heads	Amount awarded by the Tribunal	Enhanced compensation
Permanent disability	(Permanent disability 35%) (2000 x 35%) 70,000/-	(Permanent disability 50%) (2000 x 50) 100,000/-
Medical Expenses	1,11,145/-	1,45,000/-
Pain and sufferings	20,000/-	40,000/-
Attender charges	4,000/-	10,000/-
Extra Nourishment	6,000/-	6,000/-



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Heads	Amount awarded by the Tribunal	Enhanced compensation
Loss of Amenities	-	10,000/-
Transport charges	3,000/-	5,000/-
Total	Rs. 2,14,145/-	Rs.3,16,000/-

14. Thus, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount from Rs.2,14,145/- to Rs.3,16,000/- (Rupees three lakhs and sixteen thousand only) with interest @ 7.5% per annum from the date of claim petition till the date of payment. The second respondent/ Insurance Company is directed to deposit the award amount as determined above, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant is permitted to withdraw the award amount, less the amount(s) if any already withdrawn by filing necessary application before the Tribunal. The appellant/ claimant is directed to pay necessary court fee, if any, on the enhanced compensation amount. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Motor Vehicle Claims Tribunal,
Principal District Judge, Krishnagiri.

Copy To:

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

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.8146

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.7612

C.M.A.No.3320 of 2011

CP(CO)
SB(28/09/2021)