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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3748 of 2011

P.Sakunthala

... Appellant/Claimant

..Vs..

1. K.Muthu

2. The New India Assurance Co. Ltd.,
No.46, Moore Street, V Floor,
Chennai - 600 001.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 17.02.2011 made in MACT.OP.No.2598 of 2006 on the file of VI Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.R.Kalaiyarasan

For Respondent No.1 : Mr.S.Dhakshnamoorthy

For Respondent No.2 : Mr.T.A.Srinivasan for
M/s.Sree Associates

J U D G M E N T

Dissatisfied with the judgment and decree passed by the tribunal awarding compensation of Rs.91,400/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.

2. It is is the case of the claimant/appellant herein that on 3.7.2006 at 22.00 hours when the claimant was walking opposite to F-Block, Sathyamoorthy Nagar from North to South direction, an Autorikshaw bearing registration No.TN-07-AY-3421 came from East to West direction in a rash and negligent manner and hit the claimant, thereby she sustained fracture of right tibia and fibula. The first respondent being the owner of the vehicle, and the second respondent being the insurer of the vehicle are liable to pay Rs.4,00,000/-as total compensation to the claimant.

3 The first respondent remained exparte.



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4. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.8, has awarded a sum of Rs.91,400/- as total compensation payable by the Insurance Company to the claimant under the following heads:

Heads	Amount in Rs.
Loss of Income for two months at Rs.3000/- per month	6,000/-
Transportation	3,000/-
Extra nourishment	5,000/-
Damage to clothes	1,000/-
Medical expenses	1,392/-
Attender charges	5,000/-
Pain and Suffering	25,000/-
Disability of 25% @ Rs.2000 per percentage	50,000/-
To	91,392/-
unded of	91,400/-

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

6. According to the learned counsel appearing for the appellant, P.W.2 Dr.K.J.Mathiazhagan, who assessed the disability deposed before the Court that the claimant was suffered 30% disability on account of the accident she met with, whereas the tribunal has fixed the disability at 25% for the reason that the appellant was not treated by P.W.2. Since the disability assessed by P.W.2 is not excessive, the reason assigned by the tribunal is incorrect. The claimant has taken native treatment at Puthur for the fracture of proximal tibia and neck of fibula and also private treatment with Dr.Sumathi Joseph and therefore, the disability of 30% as assessed by P.W.2 can be taken to arrive just compensation. Further, according to the learned counsel appearing for the appellant, the claimant was jobless for a period of six months and the claimant was earning Rs.3500/- p.m., the tribunal has fixed the monthly income of the claimant at Rs.3000/- per month and awarded a sum of Rs.6000/- towards loss of income for a period of two months and therefore, the compensation awarded by the tribunal for a period of two months is not sufficient and the same has to be enhanced. The tribunal has awarded a meagre amount of Rs.3000/- towards transportation and no amount was



awarded for loss amenities. Therefore, the compensation awarded by the tribunal requires substantial enhancement.

7. Per contra, the learned counsel appearing for the Insurance Company submitted that the appellant/claimant has not produced medical bills towards expenses incurred by her and therefore, the tribunal has rightly fixed the disability at 25% as partial permanent disability and awarded a sum of Rs.50,000/-. In so far as other heads also, the tribunal has rightly fixed the compensation and therefore, there is no warrant to interfere with the award passed by the tribunal.

8. The claimant was met with an accident due to rash and negligent driving of the driver resulting in she sustained fracture in right tibia and fibula and her right knee movement is restricted and therefore, she filed a claim petition before the tribunal for a sum of Rs.4,00,000/-. P.W.1 and 2 were examined and Ex.P1 to P8 were marked. On the respondent side, no witness nor any exhibits were marked by the second respondent/ Insurance company. P.W.2 Dr.Mathiyazhagan deposed before the Court that he assessed disability of the claimant at 30% for the fracture sustained by her. Whereas the tribunal has fixed 25% as partial permanent disability which is not correct. This Court accepted the disability of 30% as fixed by the Doctor, P.W.2 and fixed the compensation of Rs.60,000/- towards disability. In so far as the Transportation, it would be reasonable to fix Rs.5000/-. For the loss of income, this Court is inclined to extend the loss of income for a period of four months instead of two months as fixed by the tribunal. i.e. 3000 x 4 = Rs.12,000/-. Accordingly, the compensation fixed by the tribunal is enhanced and awarded as follows:

Heads	Compensation fixed by the Tribunal Rs.	Compensation enhanced / awarded by this Court (Rs.)	Difference Amount in Rs.
Disability	50,000/-	60,000/-	10,000/-
Loss of Income	6,000/-	12,000/-	6,000/-
Transportation	3,000/-	5,000/-	2,000/-
Extra Nourishment	5,000/-	5,000/-	-
Damage to clothes	1,000/-	1,000/-	-
Medical expenses	1,392/-	1,392/-	-



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Heads	Compensation fixed by the Tribunal Rs.	Compensation enhanced / awarded by this Court (Rs.)	Difference Amount in Rs.
Attender charges	5,000/-	5,000/-	-
Pain & suffering	20,000/-	20,000/-	-
Loss of amenities	--	5,000/-	5,000/-
Total	91,392/-	1,14,392/-	23,000/-
Rounded off	91,400/-	1,14,400/-	23,000/-

Except the above modification, the award passed by the tribunal is confirmed.

9 According to the learned counsel for the appellant, the second respondent/Insurance company has paid the entire award amount of compensation along with interest at the rate of 7.5% p.a. from the date of petition till realisation. Therefore, the second respondent/Insurance company is directed to deposit the difference amount of Rs.23,000/- (Rupees twenty three thousand only) along with interest at the rate of 7.5% p.a. from the date of petition till realization before the tribunal within a period of four weeks from the date of receipt of copy of the order. On such deposit being made by the respondent company, the appellant/claimant is permitted to withdraw the amount by filing appropriate application.

10. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The VI Judge, Small Causes Court,
Chennai.



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

+1cc to Mr.S.Dhakshnamoorthy, Advocate SR.No.3484

+1cc to Mr.N.M.Muthurajan, Advocate SR.No.3679

Civil Miscellaneous Appeal No.3748 of 2011

MP (CO)
GMY (02/09/2021)