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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.3.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2951 of 2013

M.Essakkiammal ... Petitioner / Appellant

..Vs..

1. Parvathy Ortho hospital, Chennai.
(Was set exparte in the Trial Court
Notice may be dispense with)
- 2 The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 1. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 3.4.2013 made in M.C.O.P.No.4473 of 2012 on the file of V Court of Small Causes (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent No.2 : Ms.A.Salomi

JUDGMENT

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

On 4.9.2012 at about 10.15 a.m. at G.S.T. Road, Chrompet, near Vaishnava College signal, when the petitioner was travelling as a pillion rider in a motor cycle bearing registration No.TN-38-E 6449 driven by one M.Maharajan, an Ambulance bearing registration No.TN-22-BC 2408 came in a rash and negligent manner and hit the motorcycle, thereby caused accident, resulting in the petitioner sustained grievous injuries. The petitioner filed a claim petition claiming Rs.6,00,000/- 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 P20 were marked. On the side of the respondents, no oral or documentary evidence adduced.

3. The Tribunal, based on the oral and documentary evidence Ex.P1 to P20, came to the conclusion that due to the



negligence on the part of the first respondent Ambulance, the accident occurred and awarded Rs.92,500/- as compensation for the injuries sustained by the petitioner 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.
Disability 25% x 1800	45,000/-
Pain and suffering	20,000 /-
Loss of earning	10,000/-
Transport to hospital	5,000/-
Extra Nourishment	5,00 0/-
Medical expenses	7,00 0/-
Damage to clothes	5 00/-
otal : T	92,50 0/-

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 learned counsel appearing for the appellant, due to rash and negligent driving of the offending insured vehicle, the appellant sustained grievous injuries and she was admitted in hospital and had taken treatment. According to the counsel appearing for the appellant, the tribunal has not appreciated the case of the appellant in proper perspective while awarding compensation for disability. Dr.Saichandran was examined as P.W.3 who deposed before the Court below that the appellant sustained 35% disability, however, the tribunal reduced the disability to 25% and awarded compensation of Rs.45,000/- towards disability. According to the counsel appearing for the appellant, the tribunal ought to have accepted 35% disability as assessed by the Doctor, P.W.3 for the injuries sustained by the petitioner. There is no reason to disagree with the 35% disability assessed by the Doctor. Further, under other heads also, like Pain and sufferings, extra nourishment, compensation awarded by the tribunal is not adequate and no amount was awarded under the head loss of amenities. Therefore, the claimant/appellant seeks enhancement of compensation.



6 Counsel appearing for the respondent/Insurance Company would submit that tribunal has considered evidence on the side of the claimant/appellant and rightly came to the conclusion that the appellant is entitled for compensation of Rs.92,500/-. Therefore, there is no warrant to interfere with the award passed by the tribunal.

7. The first contention of the appellant is that the appellant had taken treatment at the hospital as inpatient from 4.9.2012 to 10.9.2012 again she was reviewed on 15.9.2012 and had continuous treatment. The appellant also produced Ex.P15 to prove that she had continuous treatment. P.W.3 Doctor deposed before the Court that the petitioner sustained 35% disability. However, the tribunal reduced the disability assessed by the Doctor to 25% without assigning any valid reason. Therefore, this Court accepted that the petitioner sustained 35% disability in the accident, as assessed by the Doctor. Similarly, under other heads also, it requires modification. Accordingly, the award passed by the tribunal is modified as follows:

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Permanent Disability 35% x 1800	45,000/-	63,000/-
Pain and suffering	20,000/-	20,000 /-
Loss of earning	10,000/-	10,000/-
Transport to hospital	5,000/-	5,000 /-
Extra Nourishment	5,000/-	7,500 /-
Medical expenses	7,000/-	7,000 /-
Damage to clothes	500/-	500 /-
Loss of amenities	--	10,000/ -
Total :	92,500/-	1,23,000/-

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.1,23,000/- (Rupees one lakh and twenty three 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.1,23,000/- 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-V)

//True copy//

Sub Assistant Registrar

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To

1. The V Court of Small Causes
(Motor Accidents Claims Tribunal),
Chennai

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

+1cc to Mr.K.Suryanarayanan, Advocate SR.No.14988

+1cc to Mr.C.Ramesh Babu, Advocate SR.No.14708

Civil Miscellaneous Appeal
No.2951 of 2013

SPD(CO)
GMY(06/09/2021)