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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.546 of 2016

Anjalai

...Appellant / Claimant

Vs

1.Ashok Kumar

2.New India Assurance Company Ltd,
No.45, Moore Street,
Chennai - 600 001.

...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.08.2015 and made in MACTOP.NO.2454 of 2012 on the file of the Motor Accident Claims Tribunal and Special Sub Judge-II to deal with MCOP.cases, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent 2 : Mr.G.Udaya Sankar

R1-set exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 27.08.2015 passed by the Motor Accident Claims Tribunal (Special Sub Judge-II dealing with MCOP.cases) in MCOP.No.2454 of 2012.

2. Heard Mr.F.Terry Chella Raja, learned counsel for the Appellant and Mr.G.Udaya Sankar, learned counsel for the second



respondent. Since the first respondent was set exparte before the Tribunal, notice to the first respondent is dispensed with by this Court.

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3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement of compensation.

4. The Tribunal under the impugned award has directed the second respondent Insurance Company to pay the Appellant/claimant a compensation of Rs.1,25,000/- together with interest and costs for the injuries sustained by him as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent as detailed hereunder:

Heads	Award Amount (Rs.)
For 10% partial and permanent disability at the rate of Rs.3,000/- per percentage	30,000/-
Pain and sufferings	30,000/-
Transportation charges	10,000/-
Extra Nourishment	6,000/-
Cost of Attender	5,000/-
Loss of income for 2 months	13,000/-
Loss of Amenities	30,000/-
Damage to cloth & other articles	1,000/-
Total	1,25,000/-

5. Before the Tribunal, the Appellant/claimant has filed eight documents which were marked as Ex.P1 to Ex.P8 and two witnesses were examined on her side namely the Appellant/claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the second respondent Insurance Company neither any document was filed nor any witness examined, before the Tribunal.

6. The Tribunal under the impugned Award has observed based on the exhibits marked on the side of the



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Appellant/claimant that the Appellant/claimant has only taken conservative treatment. However, the head injury sustained by the Appellant/claimant has not been disputed by the second respondent as seen from the evidence available on record. With regard to the fracture of ulna bone is concerned, the Tribunal has rightly rejected the said disability as the Appellant/claimant has not established her case, before the Tribunal that she sustained Alna bone fracture which entitled her to claim 25% disability for the same. However, as seen from the evidence available on record, it is an admitted fact that the Appellant/claimant has sustained frontal lobe brain contusion, due to the injuries sustained by her as a result of the accident. The doctor, PW2 has assessed the disability of the Appellant/claimant for the frontal lobe brain contusion as a result of the head injury caused to her due to the accident at 35%. However, the Tribunal after observing that the Appellant/claimant was fully recovered after taking treatment in the year 2010 itself, has reduced her disability to 10%. This Court is of the considered view that the reduction of disability for the frontal lobe brain contusion with Sub Dural Hemorrhage (SDH) by the Tribunal from 35% fixed by the Doctor to 10% is low and it has to be enhanced. After giving due consideration to the materials and evidence available on record as well as the referral slip issued for taking CT Scan (Ex.P3), Discharge Summary issued by the Government Hospital, Puducherry (Ex.P4), Prescription issued on 22.06.2010 (Ex.P5), O.P.chits and Slips (Ex.P6), Disability Certificate (Ex.P7) and X-Ray (Ex.P8), this Court is of the considered view that the disability towards head injury for the Appellant/claimant has to be enhanced to 25% from 10% fixed by the Tribunal. Accordingly, the same is enhanced to 25% and therefore, the disability compensation awarded by the Tribunal is accordingly, enhanced to Rs.75,000/- from Rs.30,000/- fixed by the Tribunal calculated at Rs.3,000/- per percentage of disability for 25% disability suffered by the Appellant/claimant on account of her head injury. Excepting for this modification, this Court is of the considered view that the compensation awarded by the Tribunal under various other heads of compensation cannot be considered to be excessive as alleged by the second respondent Insurance Company.

7. For the foregoing reasons, this Court enhances the compensation awarded by the Tribunal from Rs.1,25,000/- to Rs.1,70,000/- as detailed hereunder:



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Heads	Amount Awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
For partial and permanent disability at the rate of Rs.3,000/- per percentage	30,000/- (10% x 3000)	75,000/- (25% x 3000)
Pain and sufferings	30,000/-	30,000/-
Transportation charges	10,000/-	10,000/-
Extra Nourishment	6,000/-	6,000/-
Cost of Attender	5,000/-	5,000/-
Loss of income for 2 months	13,000/-	13,000/-
Loss of Amenities	30,000/-	30,000/-
Damage to cloth & other articles	1,000/-	1,000/-
Total	1,25,000/-	1,70,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the Second Respondent Insurance Company is directed to deposit the entire amount awarded by this Court along with interest @ 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.2454 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No. 2454 of 2012 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

1.The Special Sub Judge-II
dealing with MCOP cases,
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to M/s.S.Udaya Sankar, Advocate SR.No.25849

+1cc to M/s.M.Malar, Advocate SR.No.25425

C.M.A.No.546 of 2016

CNR(CO)
RVM(21/10/2021)