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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.944 of 2021

P.Bommayee

.. Appellant/Petitioners

Vs.

1.V.Mahesh

2.The National Insurance Company Limited,
Selvanayagi Complex,
Perundurai Road,
Near Collector Office,
Erode - 638 011.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 29.01.2020 made in M.C.O.P. No.862 of 2017, on the file of the Special Distict Court, (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.S.P.Yuaraj

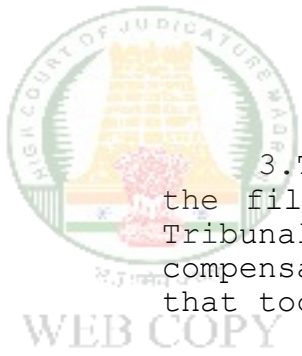
For Respondents : Mr.J.Chandran (For R2)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 29.01.2020 made in M.C.O.P. No.862 of 2017, on the file of the Special Distict Court, (Motor Accidents Claims Tribunal), Erode.

2.By consent of the learned counsel appearing for the appellant as well as the 2nd respondent, the appeal is taken up for final disposal at the admission stage itself.



3.The appellant/claimant filed M.C.O.P.No.862 of 2017, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.06.2017.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent riding by 1st respondent, rider-cum-owner of the Motorcycle and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,88,400/- as compensation to the appellant.

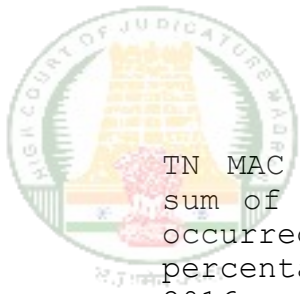
5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 29.01.2020 made in M.C.O.P. No.862 of 2017, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries in right cerebellar contusion, large frontal scalp haematoma and several injuries all over the body. He has taken treatment as in-patient at Hospital for a period of 6 days. P.W.2 Doctor examined the appellant and certified that the appellant suffered 20% permanent disability. The same is very low. The Tribunal considering the nature of injuries sustained by the appellant, ought to have awarded more compensation towards disability, instead of granting only a sum of Rs.3,000/- per percentage for 20% disability, without considering the year of accident. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that considering the nature of injuries suffered and period of treatment taken by the appellant, the Tribunal has awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

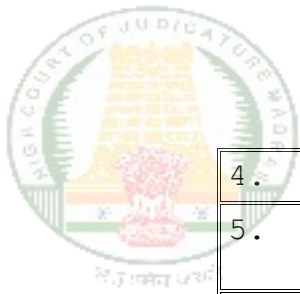
9.It is the case of the appellant that in the accident, she suffered grievous injuries and has taken treatment as in-patient at Hospital from 17.06.2017 to 22.06.2017. P.W.2-Doctor examined the appellant and certified that the appellant suffered 20% permanent disability. The Tribunal awarded a sum of Rs.60,000/- towards disability at the rate of Rs.3,000/- per percentage for 20% disability. This Court by the judgment reported in 2020 (1)



TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,00,000/- (Rs.5,000/- x 20%), at the rate of Rs.5,000/- per percentage for 20% disability. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards transportation charges is meagre and the same is enhanced to Rs.10,000/-. The Tribunal failed to award any amount towards damage to clothes. Hence, a sum of Rs.3,000/- is awarded towards damage to clothes.

10. According to appellant, at the time of accident, she was working as a Coolie and was earning a sum of Rs.8,000/- per month. She did not file any document to prove the same. In the absence of any evidence, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant, which is meagre. The accident is of the year 2017. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.13,000/- per month is fixed as the notional income of the appellant. Due to the injuries sustained in the accident, she would not have worked atleast for a period of three months. Hence, the amounts awarded by the Tribunal towards loss of income is enhanced to Rs.39,000/- [Rs.13,000/- x 3 months]. Considering the nature of injuries, disability and period of treatment, this Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	55,450/-	55,450/-	Confirmed
2.	Extra nourishment	10,000/-	10,000/-	Confirmed
3.	Pain and sufferings	30,000/-	30,000/-	Confirmed



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4.	Disability	60,000/-	1,00,000/-	Enhanced
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Transportation charges	5,000/-	10,000/-	Enhanced
7.	Damage to clothes	-	3,000/-	Granted
8.	Loss of income	18,000/-	39,000/-	Enhanced
	Total	1,88,450/-	2,57,450/-	Enhanced by Rs.69,000 /-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,88,450/- is enhanced to Rs.2,57,450/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.862 of 2017. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(Spl Cell CJ Conf)

//True copy//

Sub Assistant Registrar

gsa

To

The Special District Judge,
(Motor Accident Claims Tribunal),
Erode.



Copy To

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.P.Yuaraj, Advocate SR.No.19506

+1cc to Mr.J.Chandran, Advocate SR.No.19275

C.M.A.No.944 of 2021

AJS (CO)
GMY (08/11/2021)