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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1227 of 2014

Usha ... Appellant/Petitioner
Versus

1. D.Harikrishnan

2. The Cholamandalam MS
General Insurance Co. Lt.,
Dare House, 2nd Floor,
N.S.C.Bose Road,
Chennai - 1.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 03.04.2012 made in M.C.O.P.No.80 of 2010 on the file of the Motor Accident Claims Tribunal, Special Judge, Krishnagiri.

For Appellant : Mr.K.Prasanna
For Mr.M.Sriram
For Respondents
For R1 : Not ready in notice
For R2 : Mr.E.Rajadurai
For Mr.N.Vijayaraghavan

J U D G M E N T

This appeal is laid as against the judgment and decree dated 03.04.2012 passed by the learned Special Judge, Motor Accident Claims Tribunal, Krishnagiri, in M.C.O.P.No.80 of 2010, thereby awarded the compensation to the tune of Rs.76,311/-

2.For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3.The case of the claimant is that on 31.08.2007, when the claimant was travelling as pillion rider in a two wheeler, the lorry belonged to the first respondent was driven in rash and negligent manner by its driver and dashed against the two



wheeler and caused accident. Due to the accident the claimant sustained head injury and other multiple injuries all over her body. Hence she filed claim petition seeking compensation at Rs.5,00,000/-.

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4. Resisting the same, the second respondent filed counter stating that the petition itself is not maintainable, since no fault on the part of the driver who drove the lorry belonged to the first respondent. The accident took place only on the rash and negligent driving of the rider of the motor cycle. The claim of the claimant is also very high, excessive, exorbitant and exaggerated. Therefore, the second respondent is not at all liable to pay any compensation and sought for dismissal of the claim petition.

5. On the side of the claimant, she examined P.W.1 & P.W.2 and marked Ex.A.1 to Ex.A.8. On the side of the respondents, no one was examined and no material has been marked as exhibit. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.76,311/- as compensation payable by the second respondent. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimant came forward with the present appeal for enhancement.

6. The learned counsel appearing for the appellant/claimant submits that the petitioner sustained head injury and her disability was fixed at 30%. Even though there was no contrary evidence, the Tribunal had taken into account only 15% as disability. Insofar as the other heads also, the Tribunal awarded very low compensation. The claimant is a tailor and she earned more than Rs.6,000/- per month. Due to the head injuries sustained by her, she lost her income for six months. Even then, the Tribunal had taken a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.9,000/- as loss of income. Therefore, he prayed for enhancement of the award amount.

7. Per contra, the learned counsel appearing for the second respondent contended that the claimant had never undergone any surgery and she sustained only laceration wounds. She fell down only due the negligent driving of the rider of the motor cycle for which, the Tribunal rightly awarded the compensation and therefore he prayed for dismissal of the appeal.

8. Heard Mr.K.Prasanna, learned counsel appearing for the claimant and Mr.E.Rajadurai, learned counsel appearing for the



second respondent.

9. On 31.08.2007, when the claimant was travelling as a pillion rider in the motor cycle, the first respondent's driver had driven the lorry in rash and negligent manner and caused accident. Due to which the claimant sustained injuries in her head and injury to the right eye lid. She was treated as inpatient and P.W.2 issued disability certificate assessing her disability at 30%. She was admitted in the hospital from 31.08.2007 to 08.09.2007 and she was discharged on 08.09.2007. Admittedly no surgery had been conducted and her disability is also partial in nature. Therefore, the tribunal rightly awarded compensation for 15% of disability. Insofar as the other heads are concerned, the Tribunal awarded a sum of Rs.2,000/- towards nutritious food and Rs.1,000/- under the head of attender's charges and the same have to be enhanced. However, the interest on the award amount granted by the Tribunal has to be reduced from 9% to 7.5% .

10. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Awarded by the Tribunal	Awarded by this Court
1	Temporary disability	30,000	30,000
2	Partial loss of income	9,000	9,000
3	Medical Bills	14,311	14,311
4	Nutritious food	2,000	5,000
5	Attenders expenses	1,000	5,000
6	Pain and suffering	10,000	10,000
7	Loss of amenities	10,000	10,000
	Total	76,311	83,311

11. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.76,311/- to Rs.83,311/-

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.



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(iii) The second respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount awarded by filing proper application before the Tribunal.

(v) The appellant/claimant is not entitled to any interest for the condoned delay (default) period, if any.

(vi) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy To

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

+1cc to Mr. Mukund R. Pandiyan, Advocate SR.No.24789

C.M.A.No.1227 of 2014

CA (CO)
GN (16/12/2021)