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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.34 OF 2012

L.Meena

... Appellant/Claimant

..Vs..

1. N.Murugan

2. United India Insurance Co. Ltd.,
No.38, Anna Salai, Chennai 600 002.
(1st Respondent remained exparte)

... Respondents/Respondents

Prayer:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 21.02.2011 passed in M.C.O.P.No.4949 of 2006 by the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai-104.

For Appellant : Mr.R.Kalai Arasan

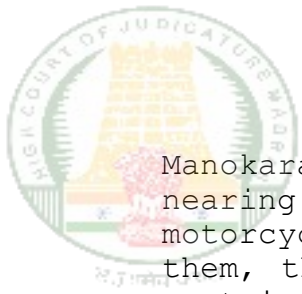
For respondent : Mr.C.Paranthaman (for R2)
Notice unserved to R1

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court for enhancement of compensation.

2. The appellant/claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 25.08.2006.

3. The brief case of the claimant is as follows: On 25.08.2006, the claimant was travelled as a pillion rider in a motorcycle bearing registration No.TN-22-L-9710 riding by one



Manokaran along Irumbuliyur-Saidapet Road, and while they nearing the place opposite to Hotel Enkala at Tambaram, a speedy motorcycle bearing registration No.22-L-5139 dashed against them, thereby the claimant and also the rider of the motorcycle sustained grievous injuries. According to the claimant, the rash and negligent riding of the first respondent was the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and the rider A.Manoharan and Dr. K.J.Mahiazhagan were examined as PW1 to PW3 and Ex.P1 to Ex.P16 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.97,500/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent disability	30,000
2	Loss of earnings	13,500
3	Transportation charges	1,000
3	Extra Nourishment	2,000
4	Damages to cloths and articles	1,000
5	Medical expenses	35,000
6	Pain and sufferings	15,000
	Total	97,500

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the insurance company and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ claimant submitted that the claimant had sustained fracture of ribs right side and also sustained injuries and the doctor has assessed the disability suffered by the Tribunal as 20%,



however, without any basis, the tribunal has fixed the disability at 15%, which is unsustainable. He further submitted that though the claimant has earned a sum of Rs.18,000/- as monthly income, the Tribunal has fixed only at Rs.4,500/- and awarded a sum of Rs.13,500/- towards " Loss of earning" that too for only three months, instead of four months, as claimed in the claim petition. He also submitted that no amount was awarded towards " Loss of amenities" and hence, he prayed to enhance the compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted after analysing the evidence and the documents on record, the Tribunal has rightly fixed the disability suffered by the claimant at 15% and awarded a just and reasonable compensation under various heads and therefore he submitted that the findings of the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is Whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

The claimant has produced the disability certificate Ex.P14, wherein, the doctor has assessed the disability suffered by the claimant as 20%. To support the above said document, the doctor was examined as PW3 and he deposed about the disability of the claimant. However, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has fixed the disability at 15%, without any basis. Hence, as per the evidence of PW3 and the Ex.P9 and the also the medical records, it is appropriate for this court to fix the disability suffered by the claimant as 20% and a sum of Rs.2,000/- is awarded per percentage. Further, no documents was produced to prove the income of the claimant and hence, a sum of Rs.4,500/- is fixed as monthly income, as rightly fixed by the Tribunal, and a sum of Rs.18,000/- is awarded for four months towards " Loss of earnings". Besides, the compensation awarded under the head " Pain and sufferings" is enhanced from Rs.15,000/- to Rs.20,000/- and a sum of Rs.10,000/- is awarded towards " Loss of amenities". As far as the compensation awarded under the other heads are concerned, this court opines that it does not warrant any interference by this court. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Permanent disability	30,000	40,000
2	Loss of earnings	13,500	18,000
3	Transportation charges	1,000	1,000
4	Extra Nourishment	2,000	2,000
5	Damages to cloths and articles	1,000	1,000
6	Medical expenses	35,000	35,000
7	Pain and sufferings	15,000	20,000
7	Loss of amenities	-	10,000
8	Total	97,500	1,27,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.97,500- to Rs.1,27,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,27,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst



To

1. The II Judge, Motor Accident claims Tribunal,
Court of Small Causes,
Chennai - 104.

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

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.15467

CMA.No.34 of 2012

SVI (CO)
CS/11/10/2021