



C.M.A.No.3431 of 2013

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.3431 of 2013

K.Latha

... Appellant

Vs.

1.D.Rajah

2.The United India Insurance Co. Ltd.,
No.9, Shanmugam Road
Tambaram West
Chennai – 600 045.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the award passed in M.C.O.P.No.1703 of 2008 dated 12.07.2012 by the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai and enhance the award amount.

For Appellant : Mr.P.D.Selvaraj

For Respondents : No appearance for R1
Mr.G.Udayasankar for R2



C.M.A.No.3431 of 2013

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree made in M.C.O.P.No.1703 of 2008 dated 12.07.2012 by the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, wherein, the Tribunal has awarded a sum of Rs.71,000/- as compensation together with interest at the rate of 7.5% per annum from the date of filing of the claim petition i.e., 28.04.2008 till the date of deposit. Being dissatisfied with the amount of compensation, the claimant has come up with this appeal.

2. The case of the claimant is that, on 14.08.2007 at about 11.30 hours, while the petitioner was traveling as a pillion rider in the motorcycle bearing Reg.No.TN 04 AA 1461 near L & T Company, Nandhampakkam on the Mount Poonamallee Road, the lorry (bearing Reg.No.unknown) was driven by its driver in a rash and negligent manner, and it dashed against the motorcycle which was proceeding on the right side. In that accident, the petitioner sustained grievous injuries. Alleging that the accident took place due to the rash and negligent driving of the driver of the lorry, the claimant claimed a sum of



C.M.A.No.3431 of 2013

Rs.2,50,000/- as compensation. However, the Tribunal has awarded a sum of Rs.71,000/- towards compensation. Considering the evidence of the injured petitioner/P.W.1 and the contents of the FIR, the Trial Court came to the conclusion that the rider of the motorcycle and the driver of the lorry are equally responsible for the accident. Therefore, the Tribunal fixed the contributory negligence in the ratio of 50:50.

3. Not satisfied with the compensation awarded by the Tribunal, the claimant has filed the above appeal for enhancement of compensation.

4. Learned counsel appearing for the appellant/claimant would submit that the claimant was aged about 42 years and was hale and healthy at the time of the accident. In order to prove the disability of the claimant, Ex.P.5 (Disability Certificate) has been marked before the Tribunal and the learned Judge without any reason has taken into account the disability as 15% instead of 20%.



C.M.A.No.3431 of 2013

WEB COPY

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed and no enhancement is necessary.

6. This Court carefully considered the submissions of the learned counsel for the appellant/claimant and the learned counsel appearing for the second respondent/Insurance Company and also perused the materials available on record.

7. According to the appellant/claimant, she was a Tailor and earning a sum of Rs.4,500/- per mensem. Due to the accident, which took place on 14.08.2007, she had suffered cerebral sutured laceration over right eye 2 X 2 cm and multiple abrasions below right eye and right hand and the disability was assessed by the Doctor as 20% and disability certificate (Ex.P5) was also issued to that effect. The Tribunal took into consideration only 15% disability and



C.M.A.No.3431 of 2013

granted a sum of Rs.2,000/- towards per percentage of disability and fixed a sum of Rs.30,000/- under the head of Permanent Disability. Considering the nature of injuries sustained by the claimant, scaling down the percentage of disability by the Tribunal is not acceptable and the learned Judge ought to have taken 20% disability as fixed by the Doctor and if 20% disability is taken into consideration, then the compensation awarded under the head of Permanent Disability would come to Rs.40,000/-.

8. Further, the Tribunal has awarded only a sum of Rs.10,000/- under the head 'Pain and Sufferings'. This Court feels that an enhancement by Rs.5,000/- would be a just and reasonable compensation under the said head. Accordingly, a sum of Rs.15,000/- is awarded under the head 'Pain and Sufferings' and disability of the claimant is fixed at 20% and a sum of Rs.40,000/- is fixed under the head 'Permanent Disability'. As far as the head and eye injuries suffered by the appellant is concerned, the Tribunal given findings that the appellant is suffering from Vertigo. Taking note of the fact that she is suffering from continuous headache, it would be reasonable to grant a sum of Rs.25,000/- under the head



C.M.A.No.3431 of 2013

'Future Medical Expenses'. Accordingly, a sum of Rs.25,000/- is awarded under the head 'Future Medical Expenses'. On all the other heads, the compensation awarded is just and reasonable. Hence, the compensation awarded by the Tribunal to the appellant/claimant is re-quantified as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal Rs.</i>	<i>Amount modified/ awarded by this Court</i>	<i>Award confirmed or enhanced or granted</i>
Loss of Income	9,000/-	9,000/-	Confirmed
Transport to Hospital	3,000/-	3,000/-	Confirmed
Extra Nourishment	5,000/-	5,000/-	Confirmed
Damage to clothing	1,000/-	1,000/-	Confirmed
Medical expenses	8,000/-	8,000/-	Confirmed
Attender Charges	5,000/-	5,000/-	Confirmed
Pain and Sufferings	10,000/-	15,000/-	Enhanced
Permanent Disability	30,000/-	40,000/-	Enhanced
Future Medical Expenses	-	25,000/-	Granted
Total	71,000	1,11,000	Enhanced by Rs.40,000/-

9. Accordingly, the compensation is enhanced to Rs.1,11,000/- from Rs.71,000/-. Since it is already decided that the appellant/claimant is entitled to



C.M.A.No.3431 of 2013

get only 50% of the Award amount by the Trial Court, the appellant/claimant is entitled to get 50% of the total compensation i.e $1,11,000 \times 50/100 = \text{Rs.}55,500/-$.

10. This Civil Miscellaneous Appeal is partly allowed and R2/Insurance Company is directed to pay the enhanced compensation of Rs.55,500/- (Rupees Fifty five thousand and five hundred only) with accrued interest at 7.5% per annum from the date of filing of petition i.e., 28.04.2008 till the date of deposit with costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the award amount together with interest and costs. The Award of the Tribunal remains unaltered in other respects. No costs.

11.03.2022

Intex : Yes/No
Internet : Yes/No
msv



C.M.A.No.3431 of 2013

WEB COPY

To

1.The Motor Accident Claims Tribunal
In the V Court of Small Causes, Chennai.

2.V.R.Section,
Madras High Court,
Chennai.



WEB COPY



C.M.A.No.3431 of 2013

J.NISHA BANU,J.

Msv

JUDGMENT MADE IN
C.M.A.No.3431 of 2013

11.03.2022