



C.M.A.No.3673 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 09.12.2022	Pronounced on 23.12.2022
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3673 of 2014

Dilbhadur,
S/o.Badan Bhadur,
No.155, A/1A, Citizen Leather Company,
G.S.T. Road, Kelambakkam,
Chennai 600 048.

... Appellant

Vs.

1.M.Victor Devanathan,
No.13, Bharathiyar Street,
Krishnanagar, Pammal,
Chennai 600 075.

2.The Manager,
The Oriental Insurance Co. Ltd.,
No.1, Abdul Razack Street,
Saidapet, Chennai 600 015.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Award and Decree made in M.C.O.P.No.1597 of 2008, dated 16.08.2011 on the file of the Motor Accident Claims Tribunal, V Fast Track Court of Small Causes at Chennai.



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For Appellant : Ms.M.Punitha Nithyarani
for Mr.A.A.Venkatesan

For Respondents : Mr.K.Vinod
for Ms.Elveera Ravindran (for R2)

R1 - No appearance

J U D G M E N T

The Appeal has been filed to set aside the Award and Decree made in M.C.O.P.No.1597 of 2008, dated 16.08.2011 on the file of the Motor Accident Claims Tribunal, Fast Track Court V, Chennai for enhancing the compensation from 45,000/- to Rs.2,00,000/-.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed the above Appeal, seeking compensation for the injuries sustained by her in a road traffic accident on 08.02.2008. The



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Tribunal has awarded a sum of Rs.45,000/- with interest at the rate of 9%. Aggrieved against the same and seeking enhancement, she has preferred this Appeal.

4.During the trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P1 to Ex.P.8 were marked and on the side of the Respondents, none was examined and no documents were marked.

5.Heard the learned counsel for the claim Petitioner/Appellant and learned counsel for the 2nd Respondent.

6.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.



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7. On the point of quantum of compensation both the parties have been heard. PW2/Dr.Saichandran was examined to speak about the injuries sustained by the claim Petitioner. As per the evidence of PW2/Doctor, the injuries are partial permanent in nature and Ex.P.5/Disability certificate also issued by him indicating the disability as partial permanent disability. Admittedly, PW2 has not given any treatment to the claim Petitioner. It is seen from the records that PW2/Doctor had examined him only on 18.06.2011, which is nearly 3 years after the accident. From Ex.P.3, Ex.P.4 & Ex.P.6, this Court finds that immediately after the accident, claim Petitioner was taken to Sundaram Hospital at Poonamallee and there he was treated as outpatient. Thereafter, he was admitted in the Government Stanley Hospital from 08.02.2008 to 14.02.2008 as inpatient for 7 days. It is seen from Ex.P.3 & Ex.P.4 that the claim Petitioner sustained abrasion injuries in the right elbow wrist, deformity in the left leg middle and there is fracture of both bones in the left leg and in the discharge summary issued at Stanley Hospital, it is mentioned that for fracture of both bones in the right leg, conservative line of management was given to the claim Petitioner, but in the list of injuries, there is no mentioning of injury in the right leg.



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8.From the above, it appears that the Petitioner had sustained fracture in the right leg both bones and the Tribunal has awarded Rs.20,000/- towards permanent disability. Considering the nature of injury, opinion of PW2/Doctor and also taking note of the fact that the Petitioner was treated as inpatient for a period of 7 days, I find that it is appropriate to fix the disability at 30% and therefore, a sum of Rs.60,000/- (Rs.2,000/- X 30) is awarded towards permanent disability and enhanced the amount awarded towards other heads including permanent disability as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Permanent disability	60000
2	Pain and sufferings	20000
3	Medical expenses	10000
4	Loss of income	10000
5	Attender charges	10000
6	Nutrition and extra nourishment	10000
7	Loss of earning power	10000
	Total	130000

The Tribunal has awarded 9% interest. Since the accident is of the year 2008, the same is reduced to 7.5 % per annum.



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9. In total, the claim Petitioner is entitled to a sum of Rs.1,30,000/- (Rupees one lakh and thirty thousand only).

10. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.45,000/- to Rs.1,30,000/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the 2nd Respondent/insurance company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the



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enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Track Court V,
Additional District and Sessions Court,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 23.12.2022