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C.M.A.No.618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.618 of 2022

Vimaladevi ... Appellant
vs.

1.G.Arunbalaji

2.The Divisional Manager,
Royal Sundaram General Insurance Co. Ltd.,
Vishranthi Malaram Towers,
No.2/319, Rajiv Gandhi Salai (OMR),
Karapakkam,
Chennai – 600 097. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation from Rs.4,25,835/- for a further sum of Rs.4,50,000/- (as restricted by Appellant) passed by learned Motor Accident Claims Tribunal at Ariyalur in MCOP.No.123 of 2019 vide Order/Award dated 18.08.2021 with higher rate of interest and costs.

For Appellant : Mr.R.Dhanasekar

For R1 : No appearance

For R2 : Ms.C.Harini

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J U D G M E N T

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This Civil Miscellaneous Appeal is filed to enhance the compensation from Rs.4,25,835/- for a further sum of Rs.4,50,000/- (as restricted by Appellant) passed by learned Motor Accident Claims Tribunal at Ariyalur in MCOP.No.123 of 2019 vide Order/Award dated 18.08.2021 with higher rate of interest and costs.

2.The appeal is filed by the claimant for enhancement of compensation.

3.According to the claimant, on 17.10.2018, while the claimant was driving her two-wheeler, the driver of the first respondent drove the vehicle in a rash and negligent manner, hit the claimant's two-wheeler and caused the accident. Due to the impact, the claimant sustained multiple grievous injuries all over the body. Immediately, she was taken to the Government Hospital, Thirumanur and then referred to Meenatchi Hospital, Thanjavur for further treatment. Due to the injuries sustained in the accident, the claimant was not able to lift any weight, write, hold etc. Therefore, the



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claimant filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident.

4.The first respondent remained ex-parte before the Claims Tribunal and the second respondent/Insurance Company contested the claim petition, by filing a detailed counter denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

5.Before the Claims Tribunal, three witnesses were examined on the side of the claimant and documents Ex.P1 to Ex.P24 were marked. The respondents neither marked any document nor let in oral evidence. The Disability certificate issued by the Medical Board was marked as Ex.C1.

6.The Claims Tribunal on an assessment of entire evidence on record returned a finding of negligence against the driver of the first respondent, awarded a sum of Rs.4,25,835/- along with 7.5% interest as compensation and mulcted the liability on the second respondent. Not satisfied with the award passed by the Claims Tribunal, the Claimant has filed the present appeal.

7.The learned counsel appearing for the appellant submitted that the



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Tribunal having adopted the unit method erred in awarding Rs.3,000/- per percentage of disability. According to the learned counsel as the accident took place in the year 2018, a sum of Rs.5,000/- per percentage of disability ought to have awarded. The learned counsel relied on the Judgment passed by this Court in the case of ***M.Chinnathambi Vs. National Insurance Company Limited in CMA.No.4645 of 2019 dated 10.01.2020*** in support of his submission. The learned counsel further submitted that the award towards other heads like attender charges, extra nourishment and pain and suffering were also on the lower side.

8.The learned counsel appearing for the respondent on the other hand submitted that the award of the Claims Tribunal was fair just and proper and the same did not call for any interference.

9.I have heard both the learned counsel and have perused the materials on record.



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10.This Court in the case of *M.Chinnathambi Vs. National*

Insurance Company Limited in CMA.No.4645 of 2019 dated 10.01.2020

held that Rs.5,000/- can be awarded for each percentage of disability. I am therefore of the view that for 42% disability sustained by the claimant, the claimant shall be entitled to Rs.2,10,000/- at Rs.5,000/- per percentage of disability. In view of the grievous injuries sustained by the claimant as evidenced by Ex.P3 and the period of hospitalisation for the treatment of the injuries, I am of the view that the award under the heads of attender charges, extra nourishment, pain and suffering needs to be enhanced. The award of the Claims Tribunal is therefore modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Disability compensation (5000 x 42 %)	Rs.1,26,000/-	Rs.2,10,000/-
2	Medical Bills	Rs.2,21,035/-	Rs.2,21,035/-
3	Loss of Income	NIL	NIL
4	Transportation expenses (Car rent)	Rs. 47,800/-	Rs. 47,800/-
5	Attender charge	Rs. 10,000/-	Rs. 20,000/-
6	Extra Nourishment	Rs. 10,000/-	Rs. 20,000/-
7	Pain & Sufferings	Rs. 10,000/-	Rs. 35,000/-
8	Damages to clothes	Rs. 1,000/-	Rs. 1,000/-



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TOTAL	Rs.4,25,835/-	Rs.5,54,835/-
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11.In the result, the claimant shall be entitled to Rs.5,54,835/- along with 7.5% interest. The second respondent/Insurance company is directed is deposit the enhanced compensation of Rs.5,54,835/- along with 7.5% interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by making proper application before the Claims Tribunal.

12.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

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Index : yes/no

Internet : yes/no

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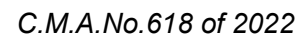
1.The Motor Accident Claims Tribunal,
Additional Sub Judge,
Ariyalur.

2.The Section Officer,

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