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C.M.A.No.177 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 25.08.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.177 of 2021

P.Indumathy

... Appellant /Petitioner

vs.

1.Venkatesan

2.Iffco Tokio General Insurance Co. Ltd.,

Iffco Bhavan, No.128, 4th Floor,

Habibullah Road, T-Nagar,

Chennai-600 017.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 20.09.2019 made in M.A.C.T.O.P.No.2689 of 2014 on the file of Motor Accident Claims Tribunal / Small Causes Court, Chennai.

For Appellant : Mr.S.Thambi

for M/s.K.V.Muthuvisakan

For R1 : Exparte vide EB

For R2 : Mr.B.Sathish Babu

for Mrs.Rathna Thara

JUDGMENT

Not being satisfied by the award passed in M.A.C.T.O.P.No.2689 of 2014 on the file of Motor Accident Claims Tribunal / Small Causes Court,



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Chennai, dated 20.09.2019, the appellant/claimant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T. Rules claiming compensation of Rs.10,00,000/- for the injuries sustained in a road accident that occurred on 16.02.2014.

3. The learned Tribunal after hearing both sides and upon considering the oral and documentary evidence has passed an award for a sum of Rs.2,29,300/- with interest at 7.5% per annum from the date of numbering the petition till the date of deposit.

4. The learned counsel for the appellant would vehemently contend that the appellant sustained comminuted fracture of right humerus and she undergone surgery by fixing implants. It was further contended that the appellant was given treatment as inpatient for 5 days. Through Ex.P3 medical bills and receipts issued by the hospital, she claimed for an amount of Rs.90,687/-, the Tribunal granted only a sum of Rs.12,243/- and prayed for enhancement.

5. It is his further argument that as the appellant has been facing so



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much difficulties due to the fractures suffered, for the disabilities suffered, the amount granted is insufficient and sought for enhancement of compensation. For the future medical expenses, the amount granted by the Tribunal is meagre. For future medical expenses, as per Ex.P8, the Doctor estimated at Rs.45,000/- to Rs.50,000/- but the Tribunal has granted only Rs.25,000/- is much less.

6. Per contra, the learned counsel appearing for the Insurance Company would strenuously argue that as per Ex.P3 medical records, the Tribunal has granted Rs.12,243/- based on the original receipts, cannot be found fault with. As regards future medical expenses, he would submit that as the implant is yet to be removed, the appellant is not entitled to claim additional amount for future medical expenses.

7. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

8. At trial, the appellant was examined as PW1 and Exs.P1 to P11 have been marked. Discharge summary and other treatment records are Exs.P2 and P4. Medical bills and hospital bills and receipts is Ex.P3 Series. On the side of the 2nd respondent/Insurance Company, Special



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Sub-Inspector of Police, Thiru.Sampath and the Officer of the 2nd respondent/Insurance Company Thiru.Aravindkumar were examined as RW1 and RW2 and Exs.R1 to R5 have been marked. Disability Certificate is Ex.X1.

9. It is the evidence of the appellant/claimant that on 16.02.2014, at about 11.15 Hours, when she was walking along Perambur - Vadivelu Street, the rider of the motor cycle bearing Reg.No.TN-05-AE-7068 came at a high speed and in a rash and negligent manner hit the appellant and she sustained severe injuries including fracture of distal humerus, is not in dispute.

10. It is seen from the medical records that namely Ex.P2 issued by M.N.Orthopaedic Hospital that the appellant was admitted on the date of the accident and she suffered comminuted intercondylar fracture of right distal humerus, for which, plates and screws were fixed internally. The appellant is working as a Junior Assistant in Directorate of Government Education. Therefore, she would definitely find it difficult to do the writing work with internal fixation (plates and screws). Therefore, this Court deems fit to grant an amount of Rs.20,000/- for the partial permanent disability in addition to the amount already awarded. For medical expenses, Ex.P3



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series, a bunch of cash bills and receipts have been filed. The total medical expenses is calculated at Rs.90,687/-. However, the appellant had received some amounts through insurance claim and some major amounts have been disallowed. Relying upon Ex.P3 details, an amount of Rs.40,000/- is granted for medical expenses in addition to the amount already awarded. With regard to future medical expenses, Ex.P8 estimate has been given by the Hospital where she had undergone treatment.

11. As rightly pointed out by the learned counsel for the Insurance Company, she is yet to remove the internal fixation. If at all, she faces some difficulties in the places where the surgery was done. as per the medical advise, she will have to undergo a surgery for removal of internal fixation. If she undergoes that surgery, she cannot reimburse the cost of the surgery. Therefore, based on the above said discussion, due to the rise in cost of living, relying upon Ex.P8, an amount of Rs.30,000/- is granted in addition to the amount already awarded under the head of future medical expenses. In all other aspects, the award of the Tribunal appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Permanent Disability	Rs. 90,000/-	Rs.1,10,000/-	Enhanced by Rs.20,000/-
2	For Pain and Sufferings	Rs. 20,000/-	Rs. 20,000/-	Confirmed
3	For Transport Expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	For Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-	Confirmed
5	For Damage to Clothes	Rs. 1,000/-	Rs. 1,000/-	Confirmed
6	For Loss of Income	Rs. 50,046/-	Rs. 50,046/-	Confirmed
7	For Medical Bills	Rs. 12,243/-	Rs. 52,243/-	Enhanced by Rs.40,000/-
8	For Future Medical Expenses	Rs. 25,000/-	Rs. 55,000/-	Enhanced by Rs.30,000/-
9	For Loss of Amenities	Rs. 10,000/-	Rs. 10,000/-	Confirmed
10	For Loss of Family Income	Rs. 1,000/-	Rs. 1,000/-	Confirmed
	Total	Rs.2,29,289/-	Rs.3,19,289/-	
	Rounded to	Rs.2,29,300/-	Rs.3,19,300/-	Enhanced by Rs.90,000/-

12. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.2,29,300/-** to **Rs.3,19,300/-** which would carry interest at the rate of 7.5% per annum.



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13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.2,29,300/- to Rs.3,19,300/-**.

(iii) The respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.3,19,300/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.A.C.T.O.P.No.2689 of 2014 on the file of Motor Accident Claims Tribunal / Small Causes Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant/claimant is at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

25.08.2023

Index : Yes/No

Speaking / Non-speaking order



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To:

1. The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in
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