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C.M.A.No.1284 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 1284 of 2018

Mariya Selvam

... Appellant

Vs.

1.Saga Devan

2.Bharathi AXA Gen Insurance Company Limited,
No.162, Metro Plaza, 2nd Floor,
Anna Salai, Chennai – 600 002.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside and enhance the Award dated 29.01.2018 made in M.A.C.T.O.P.No.1531 of 2015 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes, Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.S.Arun Kumar
for R2
R1- *ex-parte*



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J U D G M E N T

Challenging the Award dated 29.01.2018 made in

M.A.C.T.O.P.No.1531 of 2015 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai, the appellant has come forward with the present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking, before the Tribunal.

3. The case of the claimant/appellant before the Tribunal was that on 05.01.2015 at about 21.30 hrs the claimant was standing in front of Door No.34/1, 34th block, Vallavadiya Nagar, Collector Nagar, Mugappair, Chennai. At that time, a motorcycle bearing Registration No.TN 18 W 3367 proceeding from South to North direction, was driven by the driver in a rash and negligent manner and hit against the claimant. Due to the said impact, the claimant sustained multiple injuries all over the body and immediately, she was admitted in the Soundara Pandiayn Bone and Joint Hospital, Chennai for treatment. Since the driver of the motorcycle was alone responsible for the said accident, the first respondent as the owner and the



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second respondent as the Insurance Company are vicariously liable to pay to compensation. Hence, the claimant filed the claim petition claiming compensation of Rs.50,00,000/-.

4. The first respondent being the owner of the offending vehicle remained *ex-parte* before the Tribunal

5. The said claim petition was resisted by the second respondent/Insurance Company by filing a counter statement denying the manner of accident as projected by the claimant in the claim petition and also denying the age avocation and income of the claimant. Thus, they sought for dismissal of the claim petition.

6. To substantiate the case on the side of the claimant, the claimant examined herself as P.W.1 and marked the documents as Ex.P1 to Ex.P8. On the side of the second respondent, R.W.1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

7. The Tribunal, after analysing the entire evidence, found that



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the driver, who drove the first respondent's motorcycle in a rash and negligent manner and hit the claimant and that the accident had occurred.

The Tribunal further held that the first respondent/owner of the motorcycle has committed an offence by permitting the minor to drive the vehicle, which is against the policy conditions and at the time of accident, there was an insurance coverage, the second respondent being insurer of the offending vehicle is liable to pay compensation. Since there is a violation of policy conditions, the Tribunal granted an order of pay and recover and awarded consolidated amount of Rs.50,000/- together with interest at 7.5% per annum from the date of claim petition till the date of realization with costs.

8. Assailing the award passed by the Tribunal, the claimant has filed the present appeal seeking enhancement of the compensation.

9. The learned counsel for the appellant/claimant submitted that at the time of accident, the appellant, who was aged about 48 years was working as a Supervisor at Ganesh Constructions, Chennai and was earning a sum of Rs.12,000/- per month. The appellant had lost his earning capacity,



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due to the injuries and disability sustained by her in the accident. The learned counsel for the appellant further submitted that the appellant sustained multiple injuries, to prove the same Ex.P2/Copy of Accident Register and Ex.P3/Discharge Summary, Ex.P5/Disability certificate and Ex.P6/Medical bills were marked. Due to the accident, the appellant sustained Rib Fracture with Pneumothorax, Bilateral Superior and Inferior Rami Fracture. The Doctor assessed the disability of the appellant at 60% and issued disability certificate/Ex.P5. However, the Tribunal without considering the entire oral and documentary evidence, awarded a sum of Rs.50,000/- as compensation. There is absolutely infirmity and perversity in the award passed by the Tribunal and hence, the claimant prayed to enhance the award passed by the Tribunal.

10. The learned counsel for the second respondent/Insurance Company submitted that either the initial disability certificate given by the Government Doctor or the subsequent disability certificate given by the Medical Board did not mention, whether the disability is permanent or partial, temporary or total. Therefore, the Tribunal has rightly awarded a



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sum of Rs.50,000/-, as compensation. He further submitted that the first respondent's motorcycle driver did not possess any valid driving licence at the time of the accident, however, the Tribunal without considering the said fact ordered pay and recovery, which warrants interference of this Court.

11. Heard the learned counsel for the appellant and the learned counsel for the second respondent and also perused the materials available on record.

12. The main contention raised by the learned counsel for the appellant is that at the time of accident, the appellant was working as a Supervisor and was earning a sum of Rs.12,000/- per month. However, no material evidence was produced to substantiate the same. Further, contention raised is that the appellant sustained multiple injuries all over the body and also got fracture on her rib and rami. Initially, the Doctor assessed her disability at 60%, subsequently, the Medical Board assessed her disability at 70%. On a perusal of the medical records, it is seen that the appellant took treatment for five days as inpatient and she has also produced



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the medical bills for a sum of Rs.10,000/-, which clearly shows that the injuries sustained by the appellant are not permanent or total. Since the claimant did not examine any Doctor to prove her disability, this Court referred the appellant to Medical Board for assessing the disability. The Medical Board submitted a report mentioning the disability of the appellant at 70%, however, in the said report they have not mentioned the disability as permanent or partial, total or temporary and in the earlier report also it was not mentioned as permanent or partial, total or temporary. In the absence of the same, this Court cannot award the compensation on the ground of disability.

13. However, considering the facts and circumstances and also considering the submissions made by the learned counsel on either side, this Court is of opinion that the compensation awarded by the Tribunal is required to be enhanced.

14. Accordingly, the compensation awarded by the Tribunal at Rs.50,000/-, is hereby enhanced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of



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deposit. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and recover the same from the first respondent/owner of the offending vehicle. On such deposit, the appellant/claimant is permitted to withdraw the entire amount, less the amount, if any, already withdrawn. The appellant shall pay necessary Court fee, if any, on the enhanced compensation.

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

14.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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



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P.VELMURUGAN, J.

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