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C.M.A.No.23 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.23 of 2022

Sellammal

... Appellant

vs.

1.Thangavel

2.The United India Insurance Co. Ltd.,
Regional Office HUB Ranga Building,
Peramanur Main Road,
Peramanur, Salem – 636 007.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the above Civil Miscellaneous Appeal and enhance the award in the Judgment and Decree dated 10.10.2018 made in M.A.C.T.O.P.No.170 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal/Special Subordinate Judge Court No.2, Salem.

For Appellant : Mr.C.Paraneedharan

For R1 : No appearance

For R2 : Mr.R.Rajesh

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J U D G M E N T

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This Civil Miscellaneous Appeal is filed to allow the above Civil Miscellaneous Appeal and enhance the award in the Judgment and Decree dated 10.10.2018 made in M.A.C.T.O.P.No.170 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal/Special Subordinate Judge Court No.2, Salem.

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

3.According to the claimant, on 28.02.2016, while the claimant was travelling as a pillion rider in the TVS-50 Motor cycle, the motor cycle belonging to the first respondent driven by its driver in a rash and negligent manner hit the claimants motor cycle thus causing her grievous injuries. The claimant therefore filed the claim petition seeking a sum of Rs.15,00,000/- as compensation.



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4.The first respondent remained set ex-parte before the Claims Tribunal and the claim petition was contested by the second respondent.

The second respondent filed a detailed counter denying all the averments made in the claim petition, apart from disputing the negligence, liability and quantum.

5.Before the Claims Tribunal, the claimant examined herself as PW1 and the Doctor K.C.Srinivasan as PW2. Ex.P1 to Ex.P16 were marked by the claimant in support of the claim. On the side of the second respondent one witness was examined and submits R1 to R3 were marked.

6.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the driver of the first respondent's vehicle. The Claims Tribunal assessed the compensation at Rs.93,926/- along with 7.5% interest and mulcted the liability on the second respondent / Insurance Company with liberty to the second respondent to pay and recover from the first respondent. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for



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enhancement of compensation.

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7. According to the claimant, she was aged about 42 years at the time of accident. She was a self employed and was earning a sum of Rs.10,000/- per month by selling bangles and savouries. In the accident the claimant sustained grievous injuries (fracture of right leg foot and traumatic amputation right 2nd toe, crush injury) and was hospitalised from 02.03.2016 to 08.03.2016 as inpatient. During the treatment period she also underwent a surgery. The claimant claimed that she was not able to work as before due to the injuries sustained by her in the accident.

8. The learned counsel for the appellant submitted that the compensation awarded by the claims tribunal was very much on the lower side and therefore the award need to be interfered with.

9. The learned counsel for the second respondent on the other hand submitted that the award passed by the Tribunal was fair, just and reasonable and did not call for any interference.



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

11.The accident took place in the year 2016 and considering that the claimant was a self employed person and also considering the cost of living in 2016, I am of the view that a sum of Rs.9,000/- may be fixed as income of the claimant. As the claimant was hospitalised for seven days for taking treatment of the amputated toe of the right foot, I am of the view that the award towards pain and suffering and nutrition needs to be modified.

12.The income of the claimant is fixed at Rs.9,000/- per month (9000 x 12 = 10800) and 25% of the income is added towards future prospects and therefore the loss towards the functional disability is arrived at Rs.56,700/- (Rs.9,000 x 25/100 = Rs.2250/- ; 9000 + 2250 = 11250 ; 11,250 x 12 x 14 x 3/100 = Rs.56,700/-). Therefore, the award of the Tribunal is modified as follows:



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Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Functional disability	Rs.47,250/-	Rs.56,700/-
2	Pain and Sufferings	Rs.10,000/-	Rs.25,000/-
3	Loss of Amenities	Rs.10,000/-	Rs.10,000/-
4	Medical and Transport expenses	Rs.16,176/-	Rs.16,176/-
5	Extra Nourishment	Rs. 5,000/-	Rs.15,000/-
6	Attender Charges	Rs. 5,000/-	Rs. 5,000/-
7	Damages to clothes	Rs. 500/-	Rs. 500/-
TOTAL		Rs.93,926/-	Rs.1,28,376/-

13.In the result, the claimant shall be entitled to Rs.1,28,376/- along with 7.5% interest. It is submitted by the learned counsel for the appellant that the amount of Rs.93,926/- along with 7.5% interest awarded by the claims tribunal was already deposited by the second respondent/Insurance Company. Hence, a direction is issued to the second respondent/Insurance company to deposit the balance enhanced compensation of Rs.34,450/- along with 7.5% interest, within a period of four weeks from the date of



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receipt of a copy of this order. The second respondent / Insurance Company is permitted to pay and recover the enhanced compensation from the first respondent. On such deposit, the claimant is directed to withdraw the same by making proper application before the Claims Tribunal.

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

There shall be no order as to costs.

09.06.2023

Index : yes/no
Internet : yes/no
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To

1. The Motor Vehicle Accident Claims Tribunal/
Special Subordinate Judge Court No.2,
Salem.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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N.MALA, J.

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