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C.M.A.No.1215 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2023**

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1215 of 2022

Perumayee

... Appellant

Vs

1.Ravichandran

2.Kanagaraja

3.The United India Insurance Co., Ltd.,
146/N, IInd Floor, Kumar Complex, Anna Salai,
Tiruchengode - 637 211.

4.The United India Co., Ltd.,
1170, Muthiah Complex, Mettur Road,
Erode – 638 011.

... Respondents

PRAYER:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.A.C.T.O.P.No.505 of 2018 dated 11.02.2020 on the file of Motor Accident Claims Tribunal/ Special Subordinate Court, Erode.



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For Appellant : Mr.T.S.Arthanareeswaran

For the Respondents : Mr.S.Arunkumar for R3 and R4

R1 and R2 set *ex-parte*

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant, challenging the judgment and decree in M.A.C.T.O.P.No.505 of 2018 dated 11.02.2020 on the file of Motor Accident Claims Tribunal/ Special Subordinate Court, Erode seeking enhancement of the compensation Awarded by the Tribunal.

2. The appellant filed the Claim Petition in M.A.C.T.O.P.No.505 of 2018 on the file of Motor Accident Claims Tribunal/ Special Subordinate Court, Erode. She filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the grievous injuries sustained by her in the accident that took place on 21.02.2018.

3. According to the appellant, on 18.07.2018 at about 10.00 p.m.,



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while the appellant was walking on the Tiruchengode to Salem Main Road near Jaya Hospital, from North to South direction, a motorcycle bearing Registration No.TN-34-X-6681 ridden by the first respondent in a rash and negligent manner without observing the traffic Rules, dashed against the appellant; that due to the said impact, the appellant suffered grievous injuries and was admitted in a private hospital. Hence, the respondents 1 to 4 are liable to pay Rs.15,00,000/- as compensation.

4. The first respondent, who is the rider of the two wheeler was set *ex-parte* before the Tribunal.

5. The second respondent, who is the owner of the two wheeler filed counter denying all the averments made in the claim petition and submitted that he is not liable to pay any compensation to the appellant. The age, occupation and income of the appellant are denied. In any event, the compensation claimed is excessive and prayed for dismissing the petition.



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6. The third and fourth respondent/ Insurance Company filed counter denying all the averments made in the Claim Petition that the first respondent was guilty of rash and negligent driving. The appellant was negligently walking in the road without seeing the two wheeler approaching her and invited the accident. Therefore, the third and fourth respondent/Insurance Company is not liable to pay compensation. The composite negligence of the appellant is also to be taken into consideration while awarding compensation.

7. Before the Tribunal, the appellant examined herself as PW1 and examined PW2 and PW3. 15 documents were marked as Exs. P1 to P15. On the side of the third and fourth respondent/Insurance Company none was examined and no documents was produced. Disability Certificate issued by the District Medical Board was marked as Ex.C1.



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8. The Tribunal considering the pleadings, oral and documentary evidence, held that the appellant sustained grievous injuries only due to rash and negligent act of the first respondent/ rider of the two wheeler and directed the third and fourth respondent/Insurance Company being the insurer of the offending vehicle to pay a sum of Rs.3,21,000/- as compensation to the appellant.

9. The learned counsel for the appellant submitted that the Tribunal ought to have enhanced the compensation under the head permanent disability, as the appellant was working as a Coolie in a Mill and was earning a sum of Rs.12,000/- per month. In view of the grievous injuries suffered by her, she lost her earning capacity. The learned counsel further submitted that the award of compensation under the other heads are also meagre and hence, prayed for enhancement of compensation.

10. Per contra, the learned counsel for the third and fourth



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respondent/ Insurance Company submitted that the compensation awarded by the Tribunal is just, fair and reasonable and in fact excessive. The Tribunal had awarded compensation under the head “Loss of earning” and also under the head “Permanent disability”. Further the Tribunal had awarded Rs.70,000/- under the head “Pain and suffering”. Hence, the learned counsel submitted that since the award is more than just and fair, the appeal deserves to be dismissed and there is no need for any interference in the award.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the third and fourth respondents/Insurance Company and perused all the materials available on record. Though notice was served on the respondents 1 and 2, none had appeared on their behalf.



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12. The only question involved in this appeal is whether the quantum of compensation awarded by the Tribunal is just and fair?

13. This Court finds that the appellant had suffered grievous injuries and was referred to the Medical Board for examination. The District Medical Board had issued Disability certificate which was marked as Ex.C1, assessing the appellant's disability at 12%. The Tribunal awarded Rs.3,000/- for a percentage. The accident took place in the year 2018. Hence the appellant is entitled to Rs.5,000/- for a percentage of disability. Thus she is entitled to Rs.60,000/- under the head disability. It is seen that the learned counsel for the appellant is aggrieved by the award of compensation under the head “Transport to hospital”, “Extra nourishment” and “Attendant charges”. In view of the injuries suffered by the appellant; year of accident and the facts and circumstances of the case, this Court is of the view that the appellant is entitled to a sum of Rs.15,000/- in each of the three heads viz., “Transport to hospital”, “Extra nourishment” and “Attendant charges”. The learned counsel for the appellant is unable to



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point out any infirmity in the award of compensation under the other heads and hence, the same is confirmed.

14. Thus, the compensation awarded by the Tribunal is modified as follows:-

Sl. No.	Description	Amount awarded by the Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earnings	48,000/-	48,000	confirmed
2.	Transport to hospital	5,000/-	15,000	enhanced
3.	Extra nourishment	8,000/-	15,000	enhanced
4.	Attender charges	8,000/-	15,000	enhanced
5.	Future medical expenses	Nil	Nil	Nil
6.	Damages to clothes and articles	2,000	2,000/-	confirmed
7.	Medical expenses	1,44,000	1,44,000	confirmed
8.	Pain and sufferings	70,000	70,000	confirmed



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9.	Permanent disability and loss of earning power	36,000	60000	enhanced
	Total	Rs.3,21,000/-	Rs.3,69,000/-	Enhanced by Rs.48,000

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,21,000/- is hereby enhanced to Rs.3,69,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The appellants is directed to pay necessary Court fee, if any, on the enhanced compensation. The Insurance Company is directed to deposit the modified award amount, along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. No costs.

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Index : Yes/ No
Speaking order: Yes/ No
Neutral Citation: Yes/ No

To

1. Special Subordinate Court,
The Motor Accident Claims Tribunal,
Erode.
2. The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104

SUNDER MOHAN,J.

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