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C.M.A.No.2094 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No. 2094 of 2018

J.Nandhini

Appellant/Petitioner

Vs

1. Muthukumar

2. Reliance General Insurance Co.Ltd,
Rai 'Tower', Plot No.2054, 2nd Avenue,
2nd Floor, Next to Senthil Nursing Home,
Anna Nagar, Chennai - 600 40.

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.04.2018 made in M.C.O.P.No.4572 of 2010 on the file of Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

For appellant : Mr.K.Varadhakamaraj

For respondent : Mr.S.Arunkumar

JUDGMENT

Civil Miscellaneous Appeal has been filed by the claimant in

M.C.O.P.No.4572 of 2010 on the file of the Motor Accident Claims



Tribunal, (II Small Causes Court) Chennai, seeking enhancement of compensation awarded by the Tribunal.

2. For the sake of convenience and clarity, the parties herein are referred to as per their rank before the Tribunal:

3. The facts of the case are as follows:

3.1 On 20.07.2010 at about 12.15 p.m., the claimant was going from Ashok Nagar to SRM School located in West Mambalam. While he was crossing the road as a pedestrian near Rajamannar junction, an auto rickshaw bearing Regn.No.TN 07 AH 1236 belonging to the 1st respondent, came from east to west direction in a rash and negligent manner and dashed against her, as a result of which, she sustained grievous injuries. Hence, she filed a claim petition seeking compensation of Rs.5,00,000/-.

3.2. It is also stated that a criminal case has been registered against the auto driver in Cr.No.284 of 2010 on the file of the Guindy Police Station.

3.3. The 1st respondent remained *ex parte* in the claim petition.

3.4. The 2nd respondent who is the insurer of the vehicle belonging to the first respondent filed a counter and submitted that they are not liable to pay compensation if any and they admitted that the vehicle was insured with them and the driver of the auto rickshaw was having a valid driving license.

However, the second respondent disputed the manner in which the accident



took place.

3.5 Before the Tribunal, the claimant has examined herself as P.W.1 and the Dr.M.Saravanabavanatham (P.W.2) examined the claimant and issued disability certificate and marked Ex.P.1 to Ex.P.19. On the side of the respondents, one witness (R.W1) was examined and marked Ex.R1. to Ex.R3.

3.6. The Tribunal, based on the evidence placed on record holding that

- (i). The auto rickshaw driver was responsible for the accident.
- (ii). The claimant has 20% partial permanent disability.
- (iii). The Tribunal, has awarded a compensation of Rs.2,16,000/- to the claimant.
- (iv). The Tribunal, considered the violation of policy condition by the auto driver and held that, at the time of the accident, the driver was not having a valid driving license and hence, applied the principle of pay and recover.

3.7. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has approached this Court, for enhancement of compensation with the present appeal.

3.8. The learned counsel for the claimant submitted that, the



claimant herein is a lady and she has suffered severe injuries on both the ribs and wrist, which resulted in severe disability, preventing her from doing all regular activities.

3.9. Further, as assessed by the doctor, she has sustained 25% of disability but this was not properly considered by the Tribunal and hence the quantum of compensation awarded was also irrational and inappropriate and thus prays for enhancement of the same.

3.10. The learned counsel for the respondents submitted that, the Tribunal, based on the injuries sustained by the claimant, and after analyzing the evidence of the doctor (who has assessed the disability) has rightly fixed the percentage of disability as 20% and awarded a sum of Rs.2,000/- per disability since it is not a permanent disability. He also submitted that the amount of compensation awarded is just and reasonable.

4. Heard the learned counsel appearing on both sides and perused the materials placed on record.

5. On the side of the claimant, Dr.M.Saravanabavanatham (P.W.2), who issued disability certificate was examined and he stated that based on the discharge summary (Ex.P.4), and on examination the petitioner has sustained the following injuries:

(i) Lung Contusion



WEB COPY



C.M.A.No.2094 of 2018

(ii) Fracture Ribs Right 5th and 6th

(iii) Fracture Left Ribs 3rd and 8th

(iv) Abdomen Contusion

(v) Harem - Peritoneum Left Colles Fracture

Though, above evidences were appreciated by the Tribunal, it is held that the disability assessed by the doctors were not restricted to the whole body and has fixed the disability of the petitioner as 20% only and this Court finds no infirmity in findings and the disability fixed by the Tribunal is thereby confirmed.

6. The Tribunal has awarded Rs.2,000/- for each percentage of disability. The claimant has sustained three fractures on her thorax i.e., four bones, (i) Fracture Ribs Right 5th, (ii) 6th and Fracture Left Ribs 3rd and 8th and (iii) Harem - Peritoneum Left Colles Fracture. Considering the injuries sustained, the compensation amount of Rs.2,000/- for each percentage of disability awarded by the Tribunal is lesser and hence this Court enhances it to Rs.3,000 per disability, by following this Court's judgment in order dated 10.01.2020, *M.Chinnathambi vs S.Deepa and others*, [CD] 2020 MHC 1013. Similarly, the Tribunal has awarded Rs.20,000 under the head "Pain and Suffering" which is now enhanced to Rs.30,000/- and compensation under the head "Extra Nourishment" is enhanced to an amount of



C.M.A.No.2094 of 2018

Rs.10,000/- . Further, the compensation amount awarded by the Tribunal under the other heads are hereby confirmed, since the same fall within the compensation.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	40,000	60,000	Enhanced
2.	Pain and Suffering	20,000	30,000	Enhanced
3.	Extra Nourishment	5,000	10,000	Enhanced
4.	Transport to Hospital	5,000	5,000	Confirmed
5.	Damages to clothes	500	500	Confirmed
6.	Attender charges	1,000	1,000	Confirmed
7.	Medical expenses	1,27,949	1,27,949	Confirmed
8.	Future Medical Expenses	5,000	5,000	Confirmed
9.	Loss of Mental Agony	6,500	6,500	Confirmed
10	Loss of Amenities	5,000	5,000	Confirmed
	Total	2,15,949	2,50,949	Enhanced by Rs.35,000/-

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent Insurance Company is directed to deposit the total



C.M.A.No.2094 of 2018

compensation of Rs.2,51,000/-(rounded off) to the credit of M.C.O.P.No.4572 of 2010 on the file of the Motors Accident Claims Tribunal (II Small Causes, Court), Chennai with applicable rate of interest, within a period of three weeks from the date of receipt of a copy of this judgment and on such deposit the appellant/claimant shall withdraw the same. Consequently, connected miscellaneous petitions are closed. No costs.

13.09.2023

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Index: Yes/No

Internet: Yes/No

To

1.The Judge,
Motor Accidents Claims Tribunal,
II Small Causes Court, Chennai

2.The Section Officer,
VR Section,
Madras High Court.

K.RAJASEKAR.,J.

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13.09.2023