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C.M.A.No.1883 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1883 of 2023

K.Jayanthi

... Appellant

Versus

1.C.Ramkumar

(R1 remained *ex-parte* before the Tribunal)

2.The New India Assurance Co. Ltd.
45, Moore Street, Chennai.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.01.2019 passed in M.A.C.T.O.P.No.5957 of 2015, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For R2 : Ms.R.Rathna Thara



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JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.A.C.T.O.P.No.5957 of 2015, dated 28.01.2019.

2.The appellant filed the claim petition stating that on 19.05.2015 at about 06.30 hrs., while she was travelling as passenger in an auto rickshaw, the driver of the auto rickshaw drove the same in a rash and negligent manner; that as a result of which, the auto rickshaw capsized and the appellant sustained grievous injuries all over the body; and thus, she was entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company resisted the claim petition stating that the accident occurred due to the negligence of the appellant; that the driver of the offending vehicle did not possess valid driving licence and he was under the influence of alcohol; that hence, the



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appellant is not liable to pay compensation; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined herself as P.W.1 and P.W.2-Doctor, who had issued disability certificate and marked Exs.P1 to P12 on her side. On behalf of the 2nd respondent, R.W.1 was examined and Exs.R1 to R6 were marked.

6.The Tribunal after considering the oral and documentary evidence on record awarded a compensation of Rs.2,90,000/-, fixing 25% contributory negligence on the driver of the auto rickshaw and directed the 2nd respondent to pay a sum of Rs.2,17,500/-, being 75% of the compensation amount.

7.The appellant agrieved over the finding of the Tribunal directing the 2nd respondent to pay only 75% of the compensation amount and the quantum of compensation awarded by the Tribunal has filed the instant appeal.



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8.The learned counsel for the appellant submitted that even assuming that the driver of the auto rickshaw was under the influence of alcohol and violated the conditions, the Tribunal ought to have directed the 2nd respondent to pay and recover the entire compensation amount. As regards quantum of compensation, the learned counsel submitted that the disability assessed by the Tribunal was 20% and the Tribunal ought to have awarded Rs.4,000/- per percentage of disability since the accident took place in the year 2015 and hence prayed for enhancement of compensation.

9.The learned counsel for the appellant submitted that the 1st respondent remained *ex-parte* before the Tribunal and he prayed to dispense with notice to the 1st respondent and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

10.The learned counsel for the 2nd respondent per contra submitted that the finding of the Tribunal directing the 2nd respondent to pay 75%



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of compensation amount cannot be faulted; that it is for the appellant to file execution proceedings to recover 25% of the compensation amount from the owner of the auto rickshaw. As regards quantum of compensation, the learned counsel submitted that the award of the Tribunal is excessive and no interference is called for and prayed for dismissal of the appeal.

11.The questions involved in the instant appeal are:-

(1)Whether the Tribunal was right in directing the 2nd respondent to pay 75% of the compensation amount?

(2)Whether the compensation awarded by the Tribunal is just and reasonable?

12.On perusal of records, it is seen that the driver of the auto rickshaw was under the influence of alcohol as per Exs.R3 & R4. This is a case of violation of policy condition. Since it is a case of breach of policy condition, it is for the 2nd respondent to pay and recover the compensation from the owner of the auto riskshaw. Hence, the finding of the Tribunal holding that the 2nd respondent is liable to pay 75% of the



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compensation amount is set aside and the 2nd respondent is liable to pay entire compensation amount and is at liberty to recover 25% of the compensation amount from the owner of the auto rickshaw.

13.As regards quantum of compensation, this Court finds that the Tribunal had fixed the disability as 20% though P.W.2-Doctor had assessed the disability as 30%. The Tribunal had done so since P.W.2 was not the Doctor who treated the appellant. There is no infirmity in the said finding. However, since the accident took place in the year 2015, the Tribunal ought to have fixed Rs.4000/- per percentage of disability and hence, the appellant would be entitled to Rs.80,000/- under the head disability. The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation and nourishing food	20,000	20,000	Confirmed
2.	Attender Charges	3000	3000	Confirmed
3.	Medical Expenses	96,674	96,674	Confirmed
4.	Disability	60,000	80,000	Enhanced
5.	Loss of Earning	30,000	30,000	Confirmed
6.	Damages for pain, suffering and trauma	50,000	50,000	Confirmed
7.	Loss of Amenities	30,000	30,000	Confirmed
	Total	2,89,674 rounded off to 2,90,000	3,09,674 rounded off to 3,10,000	Enhanced by Rs.20,000/-
	Contributory negligence at 25 %	72,500	77,500	

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,17,500/- is hereby enhanced to Rs.3,10,000/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to pay entire compensation amount of Rs.3,10,000/- to the



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appellant, along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this judgment with liberty to recover the 25% of the compensation amount i.e Rs.77,500/- from the 1st respondent-owner of the auto rickshaw. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is not entitled to the interest for the delay period of 1300 days as per the order of this Court dated 04.08.2023 in C.M.P.No.11849 of 2023. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

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- 1.The Motor Vehicle Accident Tribunal,
IV Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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