IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1368 of 2020

A.Anita

...Appellant

Vs.

1.B.Ibrahim
2.The Divisional Manager,
United India Insurance Company Limited,
Vellore Branch, Vellore.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Accidents Claim Tribunal praying to set-aside the order and decree passed in M.C.O.P.No.197 of 2015 dated 31.01.2020 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Vellore.

For Appellant : Mr.V.Pari Vallal
For R1 : Mr.G.Vinodh Kumar
For R2 : P.Sankaranarayanan

JUDGMENT

This appeal has been filed to set-aside the order and decree passed in M.C.O.P.No.197 of 2015 dated 31.01.2020 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Vellore. The appeal is filed for enhancement of compensation.

2. The facts of the case are that, on 15.10.2014, when the appellant was returning home in a scooter, a motor cycle driven by the first respondent, in a rash and negligent manner, came in the opposite direction and hit the appellant's scooter, due to which, she sustained grievous injuries all over her body and taken to the CMC Hospital for treatment. According to appellant, the accident occurred only due to rash and negligent driving of the first respondent's vehicle, insured with the second respondent/Insurance Company. The appellant therefore filed the claim petition before the Claims Tribunal seeking compensation of Rs.32,00,000/- (Thirty Two Lakhs only) for the injuries sustained by her in the accident.

3. The first respondent remained ex-parte before the Tribunal and the appeal was contested only by the second respondent/Insurance Company.

4. The second respondent/Insurance Company denied all the allegations and averments made in the claim petition and particularly stated that its driver was not negligent. On the quantum of compensation, the second respondent/ Insurance Company stated that the compensation claimed was exorbitant and highly excessive. Therefore, second respondent/ Insurance Company prayed for the dismissal of the claim petition.

5. Before the claims Tribunal, the appellant examined herself as P.W.1. and marked Ex.P.1 to Ex.P.23. The second respondent did not examine any witness but marked Ex.R.1 and Ex.R.2. The disability certificate was marked as Ex.C.1.

6. The Tribunal, on assessment of the entire materials available on record, returned a finding of negligence against the driver of the second respondent/ Insurance Company. The Tribunal on an assessment of the evidence awarded a sum of Rs.5,87,680/- along with 7.5% interest to the appellant and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the compensation awarded by the Claims Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellant submitted that the award of the Tribunal under the various heads like "pain and sufferings", transport expenses and medical bills was unsustainable. The learned counsel further submitted that the Tribunal erred in deducting 70% of the Medical Bills to the tune of Rs.6,34,745/-, on the ground that there was Family medical claim policy which was paid to the appellant.

8. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the appellant is not entitled to the amount received by her under the Medical claim policy, as there is no loss in that regard. The learned counsel further submitted that the Award of the Tribunal under various heads was just, reasonable and fair and needed no interference by this Court.

9. I have heard both the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

10. As far as issue of reduction of 70% from the Medical Bills on the ground of reimbursement of medical policy, is concerned, I am of the view that the issue is no longer *res integra*. A Division Bench of this Court in *C.M.A.No.2232 of 2015* in para 16 held as follows:-

> *"16. In the case of mediclaim, reimbursement of medical expenditure can be sought for, against the insurer of mediclaim policy, for the actual expenditure incurred, and if the said insurer reimburses the expenses incurred by the insured or the legal representatives of the deceased, then, the surviving victim or the legal representatives cannot seek for reimbursement of the very same expenditure from the tortfeasor or the insurer of the offending vehicle, as it would amount to double payment under the head medical expenditure."*

Therefore, there is absolutely no infirmity in the findings of the Tribunal on the above aspect.

11. On the contention of the learned counsel for the appellant/claimant, as regards the attendant charges, I am of the view that the appellant is entitled to attendant charges. Considering the injuries suffered by the appellant/claimant and the prolonged treatment undergone by her, a sum of Rs.15,000/- is awarded

towards attendant charges.

12. So also, with regard to the pain and suffering and Transport charges, I am of the view that the appellant/claimant is entitled to additional amount of Rs.25,000/- under the head pain and suffering and additional amount of Rs.10,000/- towards Transport charges. In my view, in all, the appellant is entitled to additional compensation of Rs.50,000/-.

13. In view of the above discussions, the award of the Tribunal is modified as follows :-

S.No	***Various Heads***	***Awarded by the Tribunal***	***Awarded by this Court***
1.	50% disability	Rs.1,50,000	Rs.1,50,000
2.	Medical Expenses	Rs.3,27,680	Rs.3,27,680
3.	Pain and Sufferings	Rs.50,000	Rs.75,000
4.	Nourishment Expenses	Rs.20,000	Rs.20,000
5.	Loss of Income	Rs.30,000	Rs.30,000
6.	Transport Expenses	Rs.10,000	Rs.20,000
7.	Attender Charges	-	Rs.15,000
	Total	Rs.5,87,680	Rs.6,37,680

14. In view of the foregoing reasons, the appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the enhanced compensation now awarded along with accrued interest at 7.5% and costs, within a period of six (6) weeks from the date of receipt of a copy of the order after adjusting the amount, if any, already deposited. On such deposit being made, the Tribunal is directed to credit the compensation to the Bank account of the claimant by following the Division Bench decision of this Court vide order dated 11.03.2016 made in C.M.A.No.428 of 2016, reported in *2016(2) LW 561 (Madras) (Division Bench)* in the case of *The Divisional Manager, The Oriental Insurance Co. Ltd., Kannur Vs. Rajesh & Others.* Since the compensation is now enhanced, the claimant is directed to pay necessary Court fee. There shall be no order as to costs in the present appeal.

29.03.2023

dsn
Speaking Order: Yes/No
Index: Yes/No
Neutral Citation: Yes/No

To

1.The Chief Judicial Magistrate, (Motor Accident Claims Tribunal)
Vellore.

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

N.MALA.J.,

dsn

C.M.A.No. 1368 of 2020

29.03.2023