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CMA No. 1344 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1344 of 2023

P. Daisy Rani

... Appellant

Versus

1. R. Santha Kumar

(R1 remained ex parte in lower Court)

2. The Manager,
United India Insurance Co.Ltd.,
Motor Third Party Hub,
“Siling Building” 4th Floor,
No. 134, Greams Road,
Chennai 600 006.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 601 of 2017 dated 14.10.2022 on the file of the VI Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai and praying to set aside the same.

For Appellant : Ms. A.Subadra
for M/s. A.Shanmugaraj

For Respondents : Mr. T.K.Premkumar for R2.



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R1 – ex parte.

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J U D G M E N T

The appeal has been filed seeking enhancement of the compensation awarded by the Tribunal in M.C.O.P. No. 601 of 2017 dated 14.10.2022.

2.The appellant had filed claim petition seeking compensation before the Tribunal stating that on 25.04.2010, when the husband of the appellant was riding the motorcycle bearing Registration No. TN 20 AH 1852 along with the appellant, as a pillion rider, proceeding in GNT Salai in the left side towards Red Hills, an auto bearing Registration No. TN 18 A 4929 driven by its driver in a rash and negligent manner dashed the motorcycle and the appellant sustained grievous injuries and was admitted in hospital.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the



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rash and negligent riding of the husband of the appellant; the husband of the appellant did not possess valid driving license and the appellant has knowledge of the same; that the claim petition has been filed six years after the accident; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.

5. The appellant examined two witnesses on her side as PW.1 and PW.2 and marked Ex.P.1 to Ex.P.8. On the side of the second respondent, neither any witness has been examined nor any document has been marked.

6. The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the auto belonging to the first respondent and awarded a compensation of Rs.80,000/- to the appellant to be paid by the second respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

7. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre. The Tribunal had



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erroneously reduced the percentage of disability assessed by PW.2 and awarded compensation by using percentage method. The learned counsel further submitted that though the appellant had taken treatment, no compensation was awarded towards medical expenses and hence, prayed for enhancement.

8.Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellant has sought permission of this Court to dispense with the notice to the first respondent and filed verified petition and made endorsement to that effect. Hence, notice to the first respondent is dispensed with.

9.The learned counsel for the second respondent, per contra, submitted that though the accident took place in the year 2010, the claim petition was filed only in the year 2017 and the disability certificate was issued in the year 2018. Therefore, the Tribunal had rightly not accepted the disability certificate issued by PW.2 and reduced the percentage of disability to 15%. The learned counsel further submitted that the nature of injuries would show that they are minor and suggest that the compensation awarded by the Tribunal is excessive and prayed for



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dismissal of the appeal.

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10.The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.On perusal of the records, this Court finds that the accident took place in the year 2010. Due to the delay in filing the claim petition, the appellant was examined in the year 2018 by the PW.2 Doctor. PW.2 was also not the Doctor who had treated the appellant. It is seen from Ex.P.3 discharge summary issued by the Stanley Government College Hospital, Chennai that the appellant had suffered contusion in the forehead and ligament abrasion in the right elbow. Therefore, it appears that the appellant had taken treatment in Puttur Bone Centre as could be seen from Ex.P.4. The injuries mentioned in the discharge summary and the nature of treatment taken by the appellant and the fact that PW.2 had examined the appellant eight years after the accident would show that the Tribunal was right in reducing the percentage of disability to 15% for the purpose of calculating the compensation under the head disability. However, this Court finds that no compensation was awarded towards



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medical expenses. Even for taking a conservative treatment, this Court is of the view that the appellant would have incurred medical expenses for the injuries suffered by her. In the facts and circumstances of the case, it is reasonable to award Rs. 10,000/- towards medical expenses. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical Expenses	---	10,000	Granted
2.	Transport Expenses	5,000	5,000	Confirmed
3.	Extra Nourishment	5,000	5,000	Confirmed
4.	Attender charges	5,000	5,000	Confirmed
5.	Loss of earning capacity	45,000	45,000	Confirmed
6.	Loss of income (for a period of one month)	10,000	10,000	Confirmed
7.	Pain and sufferings	10,000	10,000	Confirmed
	Total	80,000	90,000	Enhanced by Rs. 10,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.80,000/- is hereby enhanced to Rs.90,000/- together with interest at



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7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of three (3) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary court fee if any on the enhanced award amount. No costs.

30.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.VI Small Causes Court (Motor Accidents Claims Tribunal),
Chennai.

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



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SUNDER MOHAN, J

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