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CMA No. 2254 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2254 of 2023

M.Selvi

... Appellant

Versus

1.Ciber Sites India Pvt.Ltd.,
6th and 7th Floor, WTC 3, Block B.Bagmane,
World Technology Centre, K.R. Puram,
Maratha Ali Ring Road, Maratha Ali Colony,
Bengalore North, Bengalore,
Karnataka – 560 037.

2.M/s.Reliance General Insurance Company Ltd.,
No. 570, Naigaum Cross Road,
Next to Royal Industrial Estate, Wadala (W),
Mumbai – 400 031.

... 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. 705 of 2016 dated 10.08.2019 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr. M. Lokesh.

For Respondents : Mr. P. Suresh Srinivasan for R2.

R1 – Dispensed with.



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J U D G M E N T

The claimant has preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No. 705 of 2016 dated 10.08.2019.

2.The claimant/appellant has filed the claim petition stating that on 16.04.2016 at about 08.55 a.m., while she was walking on the public road, a car belonging to the first respondent insured with the second respondent came from behind in a rash and negligent manner and hit a TATA ACE auto and thereafter hit the appellant, as a result of which, the appellant sustained grievous injuries.

3.The first respondent filed a counter stating that the accident did not take place due to the negligent driving of its driver; that the appellant ought to have made a claim against the owner of the TATA ACE auto; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.

4.The second respondent / insurance company remained ex parte before the Tribunal.



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WEB COPY 5.The appellant examined herself as PW1 and doctor as PW2 and marked Ex.P.1 to Ex.P.11. The first respondent neither examined any witness nor marked any document.

6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving of the driver of the car insured with the second respondent and directed the second respondent to pay a compensation of Rs.1,12,500/- to the appellant.

7.The learned counsel for the appellant submitted that though the appellant examined PW2 doctor, who assessed the disability at 28%, the Tribunal had erroneously reduced the percentage of disability to 10% without any basis. The learned counsel further submitted that no amount was awarded towards Attender charges and hence, prayed for enhancement of compensation.

8.The learned counsel for the appellant sought permission of this Court to dispense with the notice to the first respondent as they are a



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formal party and has made an 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 the appellant was not subjected to examination by Medical Board; that hence, the Tribunal was right in reducing the disability percentage to 10%; and that, the award passed by the Tribunal is just and reasonable and no interference is called for.

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

11.On perusal of the award of the Tribunal, it is seen that the appellant had suffered the following injuries; *“facial bone fracture and fracture in apex of left maxillary sinus wall with minimal hemo sinus.”* PW2, doctor who had examined the appellant had assessed the disability at 28%. Considering the nature of injuries suffered by the appellant and the disability certificate issued by the doctor and since the appellant was not subjected to examination by Medical Board, this Court is of the view



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that it would be just and reasonable to fix the disability at 15%. Since the accident is of the year 2016, the appellant would be entitled to Rs.5,000/- per percentage of disability. Hence, the compensation under the head permanent disability would be Rs.75,000/- (Rs.5,000/- X 15). The appellant was in the hospital for nearly six days. Hence, the appellant would be entitled to Rs.5,000/- under the head Attender charges. 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.	Pain and sufferings	30,000	30,000	Confirmed
2.	Permanent disability	30,000	75,000	Enhanced
3.	Medical Expenses	26,500	26,500	Confirmed
4.	Transport Expenses	4000	4000	Confirmed
5.	Extra nourishment	4000	4000	Confirmed
6.	Attender Charges	---	5000	Granted
7.	Partial loss of earning	18,000	18,000	Confirmed
	Total	1,12,500	1,62,500	Enhanced by Rs.50,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



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Rs.1,12,500/- is hereby enhanced to Rs.1,62,500/- 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 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 six (6) 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.

25.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. Motor Accidents Claims Tribunal /
Chief Judicial Magistrate Court,
Namakkal.



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



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SUNDER MOHAN, J

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