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CMA No. 1933 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1933 of 2022

S.Amutha

... Appellant

Versus

1.C.Dasarathan

2.United India Insurance Company,
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. 3030 of 2010 dated 21.03.2022 on the file of the Special Sub-Judge No. 2, Motor Accidents Claim Petitions, Small Causes Court, Chennai (MACT).

For Appellant : Mr. S.Parthasarathy

For Respondents : R1 - Exparte

Mr. S.Arunkumar (for R2)



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J U D G M E N T

The appellant has filed the instant appeal seeking enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 3030 of 2010 dated 21.03.2022.

2.The appellant had filed the claim petition stating that on 04.08.2010 at about 10.30 hours, while she was proceeding in the two wheeler, a lorry insured with the second respondent came in a rash and negligent manner and dashed the two wheeler of the appellant, as a result of which, she sustained grievous injuries.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident did not take place due to the negligence of the driver of the lorry; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.



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WEB COPY 5.The appellant examined herself as PW1 and three other witnesses as PW2 to PW4 and marked Ex.P.1 to Ex.P.13. The second respondent examined RW1 and marked Ex.R.1 to Ex.R.4. The disability certificate has been marked as Ex.C.1.

6.The Tribunal after considering the oral and documentary evidence found that the accident took place due to the rash and negligent driving of the driver of the lorry and awarded the compensation of Rs. 72,,200/- to the appellant to be paid by the second respondent.

7.The learned counsel for the appellant submitted that though the appellant had suffered fracture, the Tribunal had not awarded any compensation under the head disability. He further submitted that the compensation awarded under the other heads are also meagre and prayed for enhancement.

8.Though notice has been served on the first respondent, none has entered appearance on his behalf.



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9.The learned counsel for the second respondent submitted that the appellant was assessed by the Medical Board and the Medical Board has stated that the permanent disability of the appellant is nil. Therefore, the Tribunal was right in not awarding compensation under the head disability. The learned counsel further submitted that the award under the other heads are also just and reasonable and prayed for dismissal of the appeal.

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, it is seen that the appellant had sustained the following injuries: *“fissure fracture frontal bone with fracture maxilla / zygoma and naso ethmoidal complex with concussion brain”* as per the Ex.P.3 discharge summary. However, it is seen that the Medical Board assessed the disability of the appellant as nil. The doctors of the Medical Board were also examined as PW3 and PW4 who had reiterated their version in Ex.C.1 disability certificate. In the light of the



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above evidence, this Court is of the view that there is no infirmity in the award of the Tribunal in not granting compensation under the head disability. However, it is seen that considering the nature of injuries, the appellant would have certainly suffered loss of income for a period of six months. Hence, the compensation under the head loss of earnings is enhanced to Rs. 30,000/- (6 x Rs. 5,000/-). The compensation under the head attender charges also requires enhancement and the same is enhanced to Rs. 10,000/-. Further, the compensation under the head transportation is also enhanced to Rs. 10,000/- and the compensation under the head extra nourishment is enhanced to Rs. 15,000/-. 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	40,000	40,000	Confirmed
2.	Transportation	4,000	10,000	Enhanced
3.	Medical expenses	5,377	5,377	Confirmed
4.	Extra Nourishment	10,000	15,000	Enhanced
5.	Attender charges	2,750	10,000	Enhanced
6.	Loss of earnings	10,000	30,000	Enhanced
	Total	72,127	1,10,377	Enhanced by



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		rounded off to 72,200	rounded off to 1,10,400	Rs. 38,200/-
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12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.72,200/- is hereby enhanced to Rs.1,10,400/- 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, if not already deposited. 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 further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

13.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order



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Neutral Citation: Yes / No

To

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1. The Special Sub-Judge No. 2,
Motor Accidents Claim Petitions,
Small Causes Court,
Chennai.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J

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C.M.A. No. 1933 of 2022

Dated: 13.09.2023