IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1446 of 2022

Vaidegi ... Appellant

vs.

1.Manjunathan

2.The Divisional Manager,
National Insurance Company Limited,
No.19, Officer's Line,
Vellore. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award against the Judgment and Decree dated 06.03.2014 and made in M.A.C.T.O.P.No.40 of 2011 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

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

For R1 : Ex-parte

For R2 : Ms.R.Rathanthara

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JUDGMENT

This Civil Miscellaneous Appeal is filed to enhance the award against the Judgment and Decree dated 06.03.2014 and made in M.A.C.T.O.P.No.40 of 2011 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.

2.The appeal is filed by the claimant seeking enhancement of compensation.

3.According to the claimant, on 05.10.2010, while she was riding her bi-cycle, a Hero Honda Splendor two wheeler belonging to the first respondent driven by the driver in a rash and negligent manner hit against the claimant's bi-cycle causing her grievous injuries.

4.The claimant was aged about 20 years at the time of accident and was earning a sum of Rs.20,000/- per month. The claimant therefore filed the claim petition claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained in the accident.

5.The first respondent remained ex-parte before the Claims Tribunal and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance company filed its counter denying all the averments and allegations made in the claim petition, apart from disputing the negligence, quantum and liability.

6.Before the Claims Tribunal, the claimant examined two witnesses and marked Ex.P1 to Ex.P6 in support of her claim. On the side of the respondent two witnesses were examined and two documents were marked.

7.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the first respondent i.e. the driver of the two wheeler. The Claims Tribunal assessed the compensation at Rs.1,00,000/- along with 7.5% interest, mulcted the liability on the second respondent insurance company and further directed the second respondent to pay and recover from the first respondent, as it found that the driver of the first respondent did not possess a valid driving licence at the time of accident. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal.

8.The learned counsel for the appellant submitted that the Tribunal failed to adopt multiplier method for assessing the loss of earning capacity. The learned counsel further submitted that Tribunal having adopted the unit method erred in awarding Rs.2,000/- per percentage of liability. He further submitted that the Tribunal failed to award any compensation towards loss of income during the treatment period. The learned counsel for the appellant therefore submitted that the award of the Tribunal deserved to be modified and the compensation enhanced.

9.The learned counsel for the second respondent on the other hand submitted that the award passed by the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

10.I have heard both the learned counsels and have perused the materials placed on records.

11.It is seen that the claimant suffered fracture in the left leg and other grievous injuries in the left hand and in other parts of the body. The Tribunal on the basis of Ex.P6 awarded a sum of Rs.70,000/- at the rate of Rs.2,000/- per percentage of disability. The Tribunal further awarded a sum of Rs.15,000/- towards pain and suffering and Rs.10,000/- towards medical expenses and Rs.5,000/- towards extra-nourishment. In all the Tribunal awarded a sum of Rs.1,00,000/- as compensation. Following the Judgment in ***National Insurance Company Vs. Ramesh reported in 2013 (2) TNMAC 583***, I am of the view that Rs.3,000/- can be fixed for per percentage of disability. Therefore, the compensation towards permanent disability is enhanced to Rs.1,05,000/-.

12.The learned counsel for the appellant submitted that the Tribunal failed to assess the income of the claimant and failed to award compensation under the head of loss of income. There is no doubt that the claimant would have lost income during the treatment period.

13.Considering the period of hospitalisation and the grievous nature of injuries sustained by the claimant, this Court feels that a sum of Rs.24,000/- can be awarded towards loss of income for the treatment period at the rate of Rs.6,000/- per month (Rs.200/- per day). The award under the other heads remain same except permanent disability. Therefore, the claimant is entitled for enhancement of compensation. In view of the above discussion, the award of the claims Tribunal is modified as follows:

SI.No.	Heads	Award of the Tribunal	Award of this Court
1	Loss of Income	-	Rs. 24,000/-
2	Permanent Disability	Rs. 70,000/-	Rs.1,05,000/-
3	Pain and sufferings	Rs. 15,000/-	Rs. 15,000/-
4	Transport and Medical Expenses	Rs. 10,000/-	Rs. 10,000/-
5	Extra-nourishment	Rs. 5,500/-	Rs. 10,000/-
	TOTAL	Rs.1,00,000/-	**Rs.1,64,000/-**

14.In the result, the claimant shall be entitled to enhanced compensation of Rs.1,64,000/- along with 7.5% interest. It is further submitted by the learned counsel for the appellant that the appeal was filed with a delay of 2696 days which was condoned by this Court on 20.06.2022, subject to the condition that the claimant forfeits interest for the delay period of 2696 days. It is submitted by the learned counsel for the second respondent that the entire amount has already been deposited by the Insurance Company. Therefore, there shall be a direction to the Insurance Company to deposit the balance enhanced amount, less the interest for the delay period of 2696 days, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the claimant shall not be entitled to interest for the delay period of 2696 days. The claimant shall be entitled to withdraw the entire amount by making proper application before the Court below. The direction to the 2nd respondent to pay and recover is confirmed.

15.Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

13.06.2023

Index : yes/no
Internet : yes/no
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To

1.The Motor Accident Claims Tribunal,
Principal Sub Judge, Tiruvannamalai.

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

N.MALA, J.

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