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C.M.A.No.4317 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.4317 of 2019

Chinnathai @ Chinnathayee

... Appellant

Vs.

1.Palanisamy

2.The Iffco-Tokio General Insurance Company Ltd.,

JH Towers II Floor, New No.24, Old No.302,

L.I.C. Colony Road, Salem – 636 004.

... 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.1614 of 2017 dated 10.07.2019 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge No.1, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Notice dispensed with [R1]
Mr.N.Somasundar [R2]



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JUDGMENT

The above appeal is filed against the judgment and decree in M.C.O.P.No.1614 of 2017 dated 10.07.2019 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge No.1, Salem.

2. On 25.02.2017 at about 07.30 hrs., when the claimant was walking on the road, the Honda Activa 3G BS III – Moped bearing Reg.No.TN 30 BE 4610 driven by its driver in a rash and negligent manner, dashed against the claimant, as a result of which, the claimant sustained grievous injuries all over the body. Therefore, she filed a claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the said accident.

3. Before the Tribunal, the claimant examined herself as P.W.1 and marked 12 documents viz., Ex.P.1 to Ex.P.12. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 4 documents viz., Ex.R.1 to Ex.R.4. The Tribunal has marked two documents viz., Ex.C.1 and Ex.C.2 and Ex.W.1 was marked on the side of the witness. The Tribunal, on considering the oral and



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documentary evidence, awarded a sum of Rs.2,72,552/- under various heads by ordering pay and recovery. Not satisfied with the same, the claimant has preferred the present appeal seeking enhancement.

4. The learned counsel appearing for the appellant/claimant submitted that, when the Tribunal has accepted that the moped was driven in a rash and negligent manner and was the cause for the accident and when the medical board has assessed the disability of the claimant at 25%, the compensation awarded by the Tribunal is grossly inadequate. He also submitted that the amount awarded under the heads loss of earnings, pain and suffering, extra nourishment, loss of amenities, attender charges and transport expenditure is also minimal, since the claimant has taken treatment in the hospital for a period of one month and the same requires enhancement.

5. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, the Tribunal has considered all the materials in proper perspective and awarded compensation under the various heads, which are just and reasonable and



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the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. In this regard, this Court perused Ex.C.1, which is the disability certificate issued by the Medical Board, Omalur and the same reveals that the appellant/claimant had suffered disability of 25%. The Tribunal, by erroneously adopting a sum of Rs.3,000/- per percentage of disability, has awarded a sum of Rs.75,000/- by accepting the disability assessed by the medical board at 25%. Hence, by considering the fact that the accident is of the year 2017, this Court is inclined to fix a sum of Rs.5,000/- per percentage of disability. Therefore, the amount under the head permanent disability stands enhanced to a sum of Rs.1,25,000/- ($25 \times \text{Rs.5,000/-} =$



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Rs.1,25,000/-).

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8. Further, the Tribunal had awarded a sum of Rs.25,000/- towards pain and sufferings; Rs.24,000/- towards loss of earnings; Rs.1,07,552/- towards medical expenses; Rs.10,000/- towards transport expenditure; Rs.10,000/- towards extra nourishment; Rs.10,000/- towards attender charges; Rs.1,000/- towards damages to clothes and Rs.10,000/- towards loss of amenities. This Court finds that the compensation awarded under the heads loss of earnings, medical expenses, transport expenditure, extra nourishment, attender charges, damages to clothes and loss of amenities are just and reasonable and does not require any interference. However, insofar as the compensation awarded towards pain and sufferings is concerned, this Court feels that a sum of Rs.75,000/- would be just and reasonable compensation.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Pain and sufferings	25,000/-	75,000/- (enhanced)
2	Loss of earnings	24,000/-	24,000/-
3	Medical expenses	1,07,552/-	1,07,552/-
4	Transport expenditure	10,000/-	10,000/-
5	Extra nourishment	10,000/-	10,000/-
6	Attender charges	10,000/-	10,000/-
7	Damages to clothers	1,000/-	1,000/-
8	Loss of amenities	10,000/-	10,000/-
9	Permanent disability	75,000/-	1,25,000/- (enhanced)
	Total	2,72,552/-	3,72,552/-

10. The Tribunal has fixed the negligence on the first respondent and the second respondent being the insurer of the first respondent, the Tribunal has ordered for pay and recovery. Accordingly, the civil miscellaneous appeal is partly allowed and the impugned award of the Tribunal is modified, enhancing the compensation amount from **Rs.2,72,552/-** to **Rs.3,72,552/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1614 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as



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awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant/claimant. Thereafter, the second respondent/Insurance Company is at liberty to recover the said compensation amount from the first respondent/owner of the offending vehicle in the manner known to law. No costs.

20.12.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

1.The Motor Accident Claims Tribunal/ Special Subordinate Judge No.1, Salem.

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



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M.DHANDAPANI, J.,

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