



C.M.A(MD).No.781 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 16.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.781 of 2012

Santhanalakshmi

... Appellant

vs.

1.Nanban
Represented by its Secretary
23, Panagal Road
Madurai 625 020

2.M/s.New India Assurance Co.Ltd.,
Represented through its
Divisional Manager
Divisional Office
248B, Kamarajar Salai
Madurai 625 009

3.M.Jayakumar

4.M/s.National Insurance Co.,Ltd.,
Represented by its Divisional Manager
Divisional Office, 2nd Floor
3-North Veli Street
Madurai – 1

....Respondents



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1998, to set aside so far as the quantum of award concerned and enhance the award amount from Rs.37,000/- to that of Rs.2,00,000/- as original claim in the MCOP.No.970 of 2004 dated 07.12.2010 on the file of the Additional District Judge-Fast Tract Court No.III (Motor Accident Claims Tribunal) Madurai.

For Appellant : Mrs.A.Anandalakshmi
For M/s.A.Theethar

For R2 & R 4 : Mr.J.S.Murali

JUDGMENT

The present appeal has been filed by the claimant seeking enhancement of compensation of award passed by Additional District and Sessions Judge (Fast Tract Court No.III), Madurai in MCOP.No.970 of 2004.

2.According to the claimant, she sustained serious injuries in the accident that took place on 26.10.2003. While she was travelling as a passenger in Tata Sumo Car, a van owned by the first respondent and insured with the second respondent came from the opposite direction and dashed against the Tata Sumo.



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3.The insurance company has questioned the negligence and quantum.

4.The Tribunal after hearing both the parties arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the respondents 1 and 2. Thereafter, the Tribunal proceeded to award a sum of Rs.10,000/- towards permanent disability for the disability of 35.6%. The Tribunal had further awarded a sum of Rs.12,000/- towards medical and other incidental expenses. Totally, a sum of Rs.37,000/- has been awarded with 9% interest. The said award is under challenge in the present appeal filed by the claimant seeking enhancement.

5.The learned counsel for the appellant had contended that when the partial permanent disability is 35.6%, the Tribunal ought not to have awarded a sum of Rs.10,000/- alone towards permanent disability. She had further contended that there is a fracture in the pelvic bone, therefore the award towards pain and suffering is on the lesser side. She had further contended that when there is a fracture in the pelvic bone, an award should have been made under the head of loss of amenities.



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Hence, he prayed for enhancement of compensation.

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6.Per contra, the learned counsel appearing for the insurance company had contended that the fracture in the pelvic bone would get completely cured, if the claimant was under rest continuously. The Tribunal has awarded a sum of Rs.10,000/- towards permanent disability which cannot be found fault with. The award under other heads are reasonable and the claimant is not entitled to seek any compensation.

7.I have considered the submissions made on either side and perused the materials available on record.

8.It could be seen from Exhibit P8-discharge summary, the claimant had sustained a fracture inferior pubic rami-left side. The Doctor who was examined as PW3 had deposed that in case if the claimant was under rest continuously, her pelvic bone would be completely cured. The disability certificate Exhibit P11 reveals that she has suffered 35.6% of disability.

9.Considering the fact that she is a lady and she has suffered fracture in the hip bone, this Court finds that the award of Rs.10,000/- towards permanent disability is not legally sustainable. This Court



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proceeds to award Rs.1000/- per percentage of disability. Totally a sum of Rs.35,000/- is awarded towards permanent disability. This Court does not find any reason to interfere in the quantum of award with regard to pain and suffering and medical expenses. The accident has taken place in Madurai-Aruppukottai main road near Nagananthana Mill, Thonugal Village, Virudhunagar District and the claimant has taken treatment in Madurai. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards transport expenses. Considering the fact that there is a fracture in the pelvic bone, a sum of Rs.10,000/- is awarded for loss of amenities. However, the Tribunal has erroneously awarded 9% interest per annum which this Court reduces it to 7.5% p.a.

10.In view of the above said deliberations, the award of the Tribunal is modified as follows:

(i).Partial permanent disability	Rs.35,000.00
(ii).Pain and suffering	Rs.15,000.00
(iii).Transport expenses	Rs.10,000.00
(iv).Medical expenses	Rs.12,000.00
(v).Loss of amenities	Rs.10,000.00

Total	Rs.82,000.00



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11. Accordingly, the award of the Tribunal is modified from Rs.37,000/- to Rs.82,000/- which would carry interest at the rate of 7.5% per annum from the date of claim petition. The fourth respondent/ Insurance Company is directed to deposit the modified compensation of Rs.82,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing a formal permission petition before the Tribunal.

12. The Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

16.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Additional District Judge-Fast Tract Court No.III
(Motor Accident Claims Tribunal) Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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