



C.M.A.(MD).No.170 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

C.M.A.(MD).No.170 of 2023

Malarvizhi

... Appellant

Vs.

1.Mr.Kathirasen

2.The Branch Manager,
The New India Insurance Company Limited,
161 A, East Car Street,
Policy No.73030031150100009387.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award passed in M.C.O.P.No.253 of 2017 on the file of the Motor Accident Claims Tribunal cum Special Sub Court, Dindigul dated 26.09.2018 for enhancement of compensation.

For Appellant	:	Mr.P.Jeyasankar
For R1	:	No appearance
For R2	:	Mr.Sarvagan Prabhu



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation. The injured is the claimant before the Tribunal.

2. The brief facts leading to the filing of this appeal are as follows:

On 12.07.2016, at about 4.30 p.m., while the petitioner was trying to close the iron gate in front of her house, the Tipper Lorry bearing Registration No.TN 45 BH 6854 was driven by the driver in a rash and negligent manner and dashed against her. As a result, the petitioner has sustained injuries and three fingers have been fractured and she was admitted in the hospital and discharged on 13.07.2016. Thereafter, a case in Crime No.462 of 2016 also registered against the driver of the lorry. Hence, the petitioner has filed a petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. It is the case of the second respondent/Insurance Company that the respondent lorry not driven in a rash and negligent manner.



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3. Before the Tribunal, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P9 were marked and on the side of the respondents, no oral evidence was adduced. After considering the evidence, the Tribunal has awarded a sum of Rs.1,41,500/-. Not satisfied with the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant/claimant would submit that the Tribunal has not considered the nature of the injuries sustained by the petitioner and awarded only a sum of Rs.45,000/- towards permanent disability, by fixing at the rate of Rs.3,000/- per 1% disability, which is not proper. Similarly, for pain and suffering also a sum of Rs.30,000/- awarded. Hence, he seeks for enhancement of compensation.

5. The learned counsel appearing for the second respondent/Insurance Company would submit that though the application has been filed claiming Rs.5,00,000/-, according to him, the petitioner is not entitled to any compensation.



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6. The negligence on the part of the driver of the lorry is not disputed and the injury sustained by the petitioner also not disputed by the Insurance Company. The Tribunal has awarded only Rs.45,000/- towards 15% of permanent disability at the rate of Rs.3,000/- per month and totally awarded a sum of rupees one lakh forty one thousand and five hundred only.

7. Considering the fact that three fingers have been fractured and disfigured, this Court is of the view that the compensation ought to have been granted at the rate of Rs.5,000/- per disability. Accordingly, Rs. 45,000/- awarded towards permanent disability is enhanced to Rs. 75,000/- and another Rs.10,000/- is enhanced towards pain and suffering and for attendant charges, Rs.5,000/- is awarded, taking note of the treatment in the hospital and another Rs.5,000/- awarded towards loss of amenities. Thus, the total award amount comes to Rs.1,91,500/- in the following manner:



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S. No	Description	Amount awarded by the Tribunal
1.	For pain and suffering	Rs.40,000/-
2.	For loss of amenities	Rs.10,000/-
3.	For 15% permanent disability (Rs.5,000/- x 15%)	Rs.75,000/-
4.	For Nutrition	Rs.10,000/-
5.	For attendant charges	Rs.5,000/-
6.	For medical bills	Rs.51,000/-
	Total	Rs.1,91,500/-

8. In the result, the Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same. No costs.

20.04.2023

NCC:Yes/No

Index:Yes/No



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Speaking/Non-speaking order
akv

To

The Motor Accident Claims Tribunal cum
Special Sub Court,
Dindigul.



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N.SATHISHKUMAR, J.

akv

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