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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.36 of 2023
and
C.M.P(MD)No.1989 of 2023

A.Devi :Appellant/Petitioner

.VS.

1.S.Gayathri

2.The United India Insurance Company Limited,
Divisional office,
Promanade Road,
Cantonment,
Trichy-1.

3.The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Maraudhupathy,
Managiri Post,
Karaikudi

:Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.95 of 2022, dated 1.8.2022, on the file of the Motor Accidents Claims Tribunal/The Special Sub-Judge, Tiruchirappalli seeking enhancement of compensation of Rs.1,00,000/-

For Appellant

:Mr.N.Sudhagar Nagaraj



For Respondent-2 :Mr.S.Royce Immanuel

For Respondent-3 :Mr.Krishnakumar
(No appearance)

JUDGMENT

Challenging the order of the Motor Accidents Claims Tribunal in M.C.O.P.No.95 of 2022, the present Civil Miscellaneous Appeal is filed.

2.The appellant along with others were travelling in the Transport Corporation bus bearing Registration NO.TN63 N 1233 and proceeding from Pudukkottai to Trichy. At that time, the lorry bearing Registration No.TN30 S 9735 came from the opposite direction in a rash and negligent manner and dashed against the third respondent bus. As a result, the appellant sustained multiple grievous injuries and fractures in the right hand and all others have also sustained various injuries. Therefore claim petitions have been preferred by them.

3.The second respondent insurer of the lorry denied the rash and negligence on the part of the driver and took a stand that the third respondent Corporation driver came in the middle of the road which resulted in the accident. The third respondent has



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blamed the driver of the lorry for the accident. All the injured has filed claim petitions and the Tribunal by way of common judgment dated 1.8.2022 passed an award in respect of the injured. Challenging the award passed by the Tribunal in respect of the appellant, the present Civil Miscellaneous Appeal came to be filed.

4.The main ground on which the challenge has been made is that the Tribunal, has in fact, ignored to rely the Certificate issued by the Medical Board in M.C.O.P.No.95 of 2022, wherein, the disability of 15% has been clearly arrived at by the Medical Board. Despite, the above documents filed before the Tribunal, the same has not been considered and the Tribunal has passed a just compensation as simple injury is caused and on that head, a sum of Rs.25,000/- alone has been awarded. Hence the appeal is filed only in respect of the particular head.

5.The learned counsel for the appellant mainly would submit immediately after disposal of the M.C.O.P., he has applied for certified copies from the same Tribunal. The Tribunal has issued the certified copy to the learned counsel on 3.9.2022, however, the same has not been marked in the original proceedings and petition to receive additional evidence is also filed before this Court and



seeks to remand the matter back to the Tribunal.

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6. Heard Mr.N.Sudhagar Nagaraj, learned counsel appearing for the appellant and Mr.S.Royce Immanuel, learned counsel appearing for the second respondent and perused the materials plaed before this Court.

7. On a perusal of the certified copies filed as additional documents before this Court, the Medical Board has assessed the disability as early as on 29.3.2021 and those documents were very much available in the Court and the same has been fortified with the certified copies issued by the Tribunal. In such view of the matter, this Court is of the view that the documents filed before this Court are not considered. Accordingly, the Petition to receive the additional evidence is allowed before this Court, since the disability certificate issued by the Medical Board is not disputed by others. Instead of remanding the matter back to the Tribunal, this Court is inclined to dispose of the appeal based on the Disability Certificate.

8. The Disability Certificate issued by the Medical Board indicates that the Medical Board had assessed the Disability at 15% and only fracture was noticed in the right hand. In such view of the



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matter, if the disability is taken note of for each percentage, the normal compensation is Rs.3000/- and if the same is calculated for 15%, the compensation would be 45,000/-,whereas, the Tribunal has awarded only Rs.25,000/- towards simple injury. In such view of the matter, the compensation(simple injury) is enhanced by another Rs.20,000/- taking note of the disability certificate issued by the Medical Board. The Tribunal has also awarded Rs.1000/- for pain and suffering under the premise that it is only a simple injury. In such view of the matter, this Court enhance the compensation under the head pain and suffering to Rs.5000/- and totally, a sum of Rs.24,000/- is enhanced and the total compensation comes to Rs. 1,28,614/- with interest as awarded by the Tribunal from the date of award.

9.In the result, the Civil Miscellaneous Appeal is partly allowed, enhancing the compensation from Rs.1,04,614/- to Rs. 1,28,614/- with interest at the rate of 7.5%pa from the date of award till the date of deposit. The second respondent Insurance Company is directed to deposit the enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the



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appellant/claimant is permitted to withdraw the amount so deposited, less the award amount already withdrawn, if any, on filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

06.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
(Special Sub-Judge),
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.36 of 2023
and
C.M.P(MD)No.1989 of 2023



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