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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.889 of 2024

B.Ilaya Kiruthika
W/o.Balaji ... Appellant

Vs.

1.J.Adam

2.United India Insurance Company Limited,
Sillingi Building,
No.134, Greams Road,
Chennai - 600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.7403 of 2018 dated 19.06.2023 on the file of Motor Accident Claims Tribunal, Special Sub Court I, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj
For Respondents : Mr.D.Bhaskaran [R2]

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JUDGMENT

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The appellant/claimant, who is the injured in this case, not being satisfied with the compensation awarded by the Tribunal in M.C.O.P.No.7403 of 2018, dated 19.06.2023, has filed this appeal seeking for enhancement of compensation.

2. The case of the appellant/claimant is that he was riding the motor cycle on 16.09.2018 and at about 11 hours, the first respondent had ridden his two wheeler in a rash and negligent manner at a high speed and as a result, he dashed the two-wheeler belonging to the appellant/claimant. The appellant/claimant was thrown out of the two-wheeler and she sustained grievous injuries. The appellant/claimant suffered 'fracture proximal tibia Rt'. It is under these circumstances, the claim petition was filed before the Tribunal seeking for compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the accident had taken place only due to the rash and negligent riding on the part of the first respondent. The Tribunal also found that as on the date of accident on 16.09.2018, the first respondent did not possess valid driving license and thereby, had violated the terms of the insurance policy.

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However, considering the fact that a third party liability is being claimed, the Tribunal applied the principle of pay and recover.

4. The Tribunal having rendered the above finding proceeded to determine the compensation payable to the appellant/claimant. The total compensation was awarded at Rs.2,70,900/- in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Disability	1,40,000/-
2.	Medical expenses	51,832/-
3.	Pain and sufferings	30,000/-
4.	Loss of earnings	22,000/-
5.	Extra Nourishment	10,000/-
6.	Loss of amenities	10,000/-
7.	Transportation	4,000/-
8.	Attender charges	3,000/-
	Total	**2,70,832/-**
	Rounded off to	**Rs.2,70,900/-**

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

5. The claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed this appeal seeking for enhancement of compensation.

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6. Heard Mr.K.Varadhakamaraj, learned counsel for appellant/claimant and Mr.D.Bhaskaran, learned counsel for second respondent insurance company.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. This Court also carefully went through the award passed by the Tribunal.

9. In the instant case, the appellant/claimant was working as a tailor. The appellant/claimant suffered 'fracture proximal tibia Rt'. The appellant/claimant has also taken treatment as inpatient for nearly 10 days. The total permanent disability that was determined by the Medical Board was 28% as per Ex.C1. In view of the same, the Tribunal has calculated the compensation under the head 'disability' by fixing Rs.5,000/- towards per percentage of disability. In the considered view of this Court, the accident had taken place in the year 2018 and this Court has been consistently fixing Rs.7,000/- towards per percentage of

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disability during the relevant point of time considering the cost of living. Hence, this Court finds it appropriate to award Rs.7,000/- towards per percentage of disability. In the light of the above finding, the compensation payable under the head 'disability' would be Rs.1,96,000/- [Rs.7000 * 28].

10. Insofar as the compensation that was fixed under the head 'loss of earnings', the Tribunal had determined the notional monthly income of the appellant/claimant at Rs.11,000/- considering the avocation in which she was involved. However, the loss of earning was confined to two months. Considering the injury sustained by the appellant/claimant and the treatment that was undergone by her, the appellant/claimant would have lost her earnings for at least a period of three months. Hence, the compensation awarded under the head 'loss of earnings' is enhanced to Rs.33,000/- (11000 * 3).

11. The compensation awarded under the head 'extra nourishment' is also increased from Rs.10,000/- to Rs.25,000/-. The compensation under the other heads looks reasonable and it does not require the interference of this Court.

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12. In the light of the above discussion, this Court modifies the compensation in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Disability	1,96,000/-
2.	Medical expenses	51,832/-
3.	Pain and sufferings	30,000/-
4.	Loss of earnings	33,000/-
5.	Extra Nourishment	25,000/-
6.	Loss of amenities	10,000/-
7.	Transportation	4,000/-
8.	Attender charges	3,000/-
	Total	**3,52,832/-**

13. The compensation awarded by the Tribunal at Rs.2,70,900/- is enhanced to Rs.3,52,832/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant/claimant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

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In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

10.04.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
gm

To

The Motor Accident Claims Tribunal,
Special Sub Court I,
Small Causes Court, Chennai.

N.ANAND VENKATESH, J.

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