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CMA.No.182 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.182 of 2024

Kantha

.... Appellant

vs.

1. K. Udhaya Kumar

2. United India Insurance Company Limited

No.134, Greams Road

IV Floor, Anna Salai,

Chennai 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 25.04.2023 in M.A.C.T.O.P.6983/2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Ms. A. Subadra

R1 : No appearance

For R2 : Mrs. I. Malar



CMA.No.182 of 2024

JUDGMENT

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The appellant is the claimant in M.A.C.T.O.P.6983/2017 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Chennai, and she filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.35,00,000/- for the injuries sustained by her in a road accident that occurred on 31.10.2017.

2. The case of the claimant is that on 31.10.2017, when she was waiting to cross Velacherry 100 feet bye pass road, a speeding motorcycle bearing Registration number TN-19-D-5194 hit her as a result of which she fell down and sustained injuries all over her body. She was immediately rushed to a nearby hospital.

2.1. According to the claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration number TN-19-D-5194 was the cause of the accident and that since the said motorcycle was insured with the second respondent, the United India Insurance Company



CMA.No.182 of 2024

Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to her.

3. In the Tribunal the owner of the motorcycle remained absent and was set *ex parte*. The second respondent insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler bearing Registration number TN-19-D-5194 and directed the second respondent Insurance Company to pay compensation of Rs.3,57,700/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation. The Tribunal further held that the liability of the owner of the motorcycle and the insurance company is joint and several.

5. Aggrieved over the quantum of compensation awarded by the



CMA.No.182 of 2024

Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mrs. A.Subadra, learned counsel appearing for the appellant and Mrs.I. Malar, learned counsel appearing for the second respondent/Insurance Company.

7. Mrs. A.Subadra, learned counsel appearing for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. She, therefore, prayed for enhancement of the same.

8. Per contra, Mrs.I. Malar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, after analysing the evidence on record, had awarded just compensation and therefore the same need not be disturbed in the present appeal.

9. A perusal of the records shows that the claimant sustained a



CMA.No.182 of 2024

fracture on femur. The Medical Board attached to the Government Royapettah Hospital, Chennai, assessed the partial permanent disability of the claimant as 20%. Since there is no functional disability, the Tribunal awarded a sum of Rs.1,00,000/- towards partial permanent disability by fixing a sum of Rs.5,000/- per percentage of disability. The claimant was aged 34 years on the date of accident. Considering the age of the claimant and the year of accident, a sum of Rs.7,000/- per percentage of disability is awarded. Hence, a sum of Rs.1,40,000/- is awarded towards partial permanent disability.

9.1. According to the claimant she was a tailor by profession earning a sum of Rs.20,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.10,500/- and awarded a sum of Rs.21,000/- towards loss of income for a period of two months. On account of the accident, the claimant would have been out of action atleast for six months and therefore, a sum of Rs.63,000/- (10,500x6) is awarded towards loss of income.



CMA.No.182 of 2024

9.2. The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court under various heads.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Partial permanent disability	1,00,000/- (20x5000)	1,40,000/- (20x7000)
2.	Pain and sufferings	30,000/-	30,000/-
3.	Transportation	4,000/-	10,000/-
4.	Medical expenses	1,79,627/-	1,79,627/-
5.	Extra nourishment	10,000/-	25,000/-
6.	Attender charges	3,000/-	5,000/-
7.	Loss of income	21,000/-	63,000/-
8.	Loss of amenities	10,000/-	10,000/-
		3,57,627/- Rounded off to 3,57,700/-	4,62,627/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced to Rs.4,62,627/- that would carry interest at the rate of 7.5% per annum.

10. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.



CMA.No.182 of 2024

WEB COPY

- ii. The compensation awarded by the Tribunal is enhanced to Rs.4,62,627/-.
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The second Respondent, the United India Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.4,62,627/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.A.C.T.O.P.6983/2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.
- v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.



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CMA.No.182 of 2024

29.10.2024

Index : Yes/No
Speaking/Non-speaking order
bga
To

1. Motor Accident Claims Tribunal, Special Sub Court No.1,
Small Causes Court, Chennai.
2. United India Insurance Company Limited
No.134, Greams Road
IV Floor, Anna Salai,
Chennai 600 006.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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CMA.No.182 of 2024

R.HEMALATHA, J.

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C.M.A.No.182 of 2024

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