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C.M.A.No.1580 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1580 of 2024

J.Fathima Sabana

...Appellant

.Vs.

1.P.Punniyakodi

2.Reliance General Insurance Company Limited,
No.6, 4th Floor, Haddows Road,
Nungambakkam, Chennai - 600 006.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 02.11.2022 in M.C.O.P.474 of 2019 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.G.Vasudevan

JUDGMENT

The appellant is the claimant in M.C.O.P.474 of 2019 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.



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She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by her in a road accident that took place on 04.12.2018.

2. The brief case of the claimant is as follows:

On 04.12.2018, the claimant was riding a motorcycle bearing Registration Number TN-13-B-7702 on Kamarajar Nagar Main Road, Mettukuppam and at about 9.30 hours, a Tanker Lorry bearing Registration Number TN-12-C-8560 hit the two wheeler, as a result of which, the claimant was thrown out from the two wheeler and sustained injuries all over her body. She was immediately rushed to Government K.M.C. Hospital, Kilpauk, Chennai, where she was treated as an inpatient for 31 days.

3. According to the claimant, the rash and negligent driving of the driver of the Tanker Lorry bearing Registration Number TN-12-C-8560 belonging to the first respondent was the cause of the accident and that since the said Tanker Lorry was insured with the second respondent, the Reliance General Insurance Company Limited, the owner of the Tanker



Lorry (first respondent) and the insurer are jointly and severally liable to pay compensation to her.

4. In the Tribunal, the owner of the Tanker Lorry remained absent and was set *ex parte*. The second respondent, the Reliance General Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the Tanker Lorry and directed the second respondent, Insurance Company to pay compensation of Rs.2,46,300/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realization, vide its orders dated 02.11.2022.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



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7. Heard Mr.K.Varadha Kamaraj, learned counsel for the appellant and Mr.G.Vasudevan, learned counsel for the second respondent.

8. Mr.K.Varadha Kamaraj, learned counsel for the appellant contended that the claimant sustained crush injury on her left leg and was hospitalized for about 31 days. It is also his contention that the Regional Medical Board attached to Government Royapettah Hospital, Chennai, assessed the partial permanent disability of the claimant as 30% and however, the Tribunal had awarded a meagre amount of Rs.2,46,300/- towards compensation. He therefore prayed for enhancement of compensation.

9. *Per contra*, Mr.G.Vasudevan, learned counsel for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.



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10. The Regional Medical Board attached to Government Royapettah Hospital, Chennai, has assessed the partial permanent disability of the claimant as 30%. The Tribunal has awarded Rs.5,000/- per percentage of disability since there was no functional disability. The disability certificate does not speak about functional disability. The age of the claimant was 28 years at the time of accident and the accident took place in the year 2018. Considering the same, awarding Rs.7,000/- per percentage would meet the ends of justice.

11. The Tribunal while awarding compensation under various heads, has awarded sum of Rs.22,000/- towards "loss of income". A perusal of the discharge summary (Ex.P3) shows that the claimant took treatment as an in-patient from 04.12.2018 to 03.01.2019 in Government Kilpauk Medical College Hospital, Chennai, as she sustained crush injury on her left leg and therefore, the appellant would not have been in a position to attend to her regular work atleast for four months. Thus, a sum of Rs.44,000/- ($11,000 \times 4 = 44,000$) is awarded towards loss of income. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability (Rs.7,000/- x 30 = 2,10,000)	1,50,000/-	2,10,000/-
2.	Pain and sufferings	40,000/-	40,000/-
3.	Transportation charges	4,000/-	10,000/-
4.	Extra nourishment	10,000/-	10,000/-
5.	Attender's charges	9,300/-	10,000/-
6.	Damage to clothes	1,000/-	1,000/-
7.	Loss of amenities	10,000/-	20,000/-
8.	Loss of earnings	22,000/-	44,000/-
TOTAL		Rs.2,46,300/-	Rs.3,45,000/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,46,300/- to Rs.3,45,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

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



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- ii. The compensation awarded by the Tribunal is enhanced from Rs.2,46,300/- to Rs.3,45,000/-.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The second respondent, the Reliance General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.3,45,000/- (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.C.O.P.474 of 2019 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy 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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vi. The appellant / claimant is not entitled to claim any interest for the period of delay of 253 days in filing this appeal.

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Index : Yes/No
Speaking / Non-speaking order
mtl

To

1. The Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai.

2. Reliance General Insurance Company Limited,
No.6, 4th Floor, Haddows Road,
Nungambakkam, Chennai - 600 006.

3. The Section Officer, VR Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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