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Civil Miscellaneous Appeal No.1167 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1167 of 2024

and

C.M.P.No.4327 of 2022 in CMA Sr.No.19814 of 2022

Gail Maria

D/o.Royal Johnson

... Appellant

Vs.

1.Mohamed Nawas P.H.

S/o.P.Hajepeer Mohideen

(since R1 remained *ex parte* before the Tribunal
his presence may be dispensed with)

2.ICICI Lombard General Insurance Company Limited,

No.140, Chottabi Centre 2nd Floor,

Nungambakkam High Road,

Chennai - 600 034.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.10.2017 made in M.A.C.T.O.P.No.4525 of 2013 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.A.Subadra

For Respondents : Mr.R.Michael Visuvasam
for Mr.R.V.Sivaraj [R2]



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JUDGMENT

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The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, in M.A.C.T.O.P.No.4525 of 2013, dated 26.10.2017, has filed the present appeal.

2. The case of the claimant is that on 03.04.2013 when she was walking in the road near T.Nagar along with two others and was nearing G.N.Chetty road, at about 16.15 hours, the offending vehicle, which was a two wheeler was ridden in a rash and negligent manner and it dashed the claimant resulting in the claimant losing her four front teeth and also sustaining dental alveolar fracture. The claimant undertook treatment as an inpatient for nearly six days from 03.04.2013 to 08.04.2013 and she underwent correction procedure. The doctor, who treated the claimant, assessed the disability at 35% partial and permanent disability. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.



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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a categorical conclusion that the accident had taken place only due to the rash and negligent riding of the two wheeler. After having come to such a conclusion, the Tribunal fixed the total compensation at Rs.1,08,500/- (rounded off to Rs.1,09,000/-) under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical bills	40,500/-
2.	Disability	30,000/-
3.	Loss of income	16,000/-
4.	Pain and suffering	10,000/-
5.	Transport to hospital	5,000/-
6.	Extra nourishment	5,000/-
7.	Attender charges	2,000/-
	Total	1,08,500/-
	Rounded off to	1,09,000/-

The above compensation was directed to be paid with interest at 9% p.a.

4. The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed the present appeal seeking for enhancement of compensation.



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5. Heard Ms.A.Subadra, learned counsel for appellant/claimant and Mr.R.Michael Visuvasam, learned counsel for second respondent.

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

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

8. In the instant case, the nature of injuries sustained by the claimant has already been taken note of. The claimant had to undergo fracture stabilization with dental care and was taking treatment for nearly six days as an inpatient. The disability was assessed by the doctor, who treated the claimant at 35% partial and permanent disability. The Tribunal had fixed the disability at 10% and granted Rs.3,000/- per percentage. Considering the nature of injuries sustained by the claimant in the face, this Court is inclined to fix the disability at 25%. Accordingly, the compensation under the head 'disability' would be Rs.75,000/- (3,000 * 25).



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9. The claimant has taken treatment as an inpatient for six days and therefore, this Court is inclined to fix the compensation under the head 'attender charges' at Rs.6,000/-.

10. The claimant had relied upon Exs.P9 and P10 to substantiate that she was earning a sum of Rs.3,00,000/- p.a. The same was not acted upon by the Tribunal on the ground that the claimant did not file any supporting documents or pay bills to prove that the said salary was in fact earned by the claimant. The Tribunal had fixed the compensation at Rs.16,000/- under this head. Considering the qualification of the claimant and the fact that the claimant would have been out of action for at least one month, this Court is inclined to act upon Exs.P9 and P10 and fix the compensation under the head 'loss of income' at Rs.25,000/-.

11. Insofar as the compensation fixed under the head 'pain and suffering' is concerned, considering the nature of injuries sustained by the claimant on the face, this Court is inclined to fix the compensation at Rs.25,000/-. Similarly, this Court is also inclined to enhance the compensation under the head 'extra nourishment' to Rs.10,000/-.



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12. The compensation awarded under the other heads is justified and does not require the interference of this Court.

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

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Medical bills	40,500/-	40,500/-
2.	Disability	30,000/-	75,000/-
3.	Loss of income	16,000/-	25,000/-
4.	Pain and suffering	10,000/-	25,000/-
5.	Transport to hospital	5,000/-	5,000/-
6.	Extra nourishment	5,000/-	10,000/-
7.	Attender charges	2,000/-	6,000/-
	Total	1,08,500/-	1,86,500/-
	Rounded off to	1,09,000/-	-

14. The compensation awarded by the Tribunal at Rs.1,09,000/- is enhanced to Rs.1,86,500/-. 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 (4) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of



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Rs.77,500/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 1470 days as was ordered by this Court in C.M.P.No.11974 of 2022 in C.M.A.Sr.No.19814 of 2022 dated 18.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.



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N.ANAND VENKATESH, J.

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