



Civil Miscellaneous Appeal No.1815 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1815 of 2024

V.Suganya

D/o.Vengadesan

... Appellant

Vs.

1.N.Raja

2.New India Assurance Co. Ltd.,
No.232, NSC Bose Road,
6th Floor, Parrys,
Chennai - 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.09.2023 made in M.C.O.P.No.4314 of 2018 on the file of Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Ms.R.Rathna Thara [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, III Court of Small Causes, Chennai, in M.C.O.P.No.4314 of 2018, dated 08.09.2023, has filed this appeal.

2. The case of the claimant is that on 07.02.2018 she was travelling as a pillion rider in a two wheeler towards Mahindra City, which was ridden by the first respondent. The two wheeler was ridden in a rash and negligent manner and at about 19.00 hours, the rider of the two wheeler lost control and the two wheeler capsized as a result of which the claimant was thrown out of the two wheeler and she sustained S/P right fronto temporo parietal decompressive craniectomy for TBI and post cranioplasty status with seizure.

3. The claimant underwent treatment as an inpatient from 07.02.2018 to 13.02.2018 and once again from 16.04.2018 to 19.04.2018 and two surgeries were performed on 07.02.2018 and 17.04.2018. Even



thereafter, considering the nature of injuries, the claimant once again took treatment from 08.11.2018 to 09.11.2018. The Medical Board fixed the permanent disability at 24%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.6,18,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical Expenses	4,13,142/-
2.	Disability	1,20,000/-
3.	Pain and sufferings	30,000/-
4.	Loss of earnings	26,000/-
5.	Extra nourishment	10,000/-
6.	Loss of amenities	10,000/-
7.	Transport charges	4,000/-
8.	Attender charges	3,900/-
9.	Damage to clothes	1,000/-
	Total	6,18,042/-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
	Rounded off to	6,18,000/-

The above compensation was directed to be paid along with interest at 7.5% p.a. The insurance company was also given liberty to pay and recover the compensation amount.

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

6. Heard Mr.K.Varadhakamaraj, learned counsel for appellant/claimant and Ms.R.Rathna Thara, learned counsel for second respondent insurance company.

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

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



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9. In the instant case, the claimant, who is aged about 23 years, has sustained facial injuries as a result of which she had to undergo continuous treatment till November 2018. Two surgeries were also performed. The Medical Board has assessed the permanent disability at 24%. The Tribunal has adopted per percentage method and has fixed a sum of Rs.5,000/- per percentage.

10. Considering the fact that the accident had taken place in the year 2018, this Court is inclined to grant a sum of Rs.7,000/- per percentage. Accordingly, the compensation payable under the head 'disability' would be Rs.1,68,000/- [7000 * 24].

11. The nature of injuries sustained by the claimant and the treatment undergone by her has already been referred supra. This Court finds that the compensation awarded under the other traditional heads are on the lower side and it requires enhancement. Considering the nature of injuries sustained by the claimant, this Court is inclined to enhance the compensation under the heads 'pain and sufferings', 'extra nourishment' 'attender charges' and 'transportation charges' to Rs.50,000/-, Rs.25,000/-,



Rs.15,000/- and Rs.15,000/- respectively.

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12. As stated above, the claimant was a 23 year old girl and had sustained facial injuries. Therefore, sufficient compensation must be granted under the head 'loss of amenities'. Accordingly, the compensation under the head 'loss of amenities' is enhanced to Rs.50,000/-.

13. This Court has already taken into consideration the fact that the claimant had taken treatment till November 2018 for the accident, which took place in February 2018. Considering Ex.P6 - claimant's diploma certificate copy and Ex.P7 - salary revision and appointment order copy and the avocation in which the claimant is claimed to be engaged, this Court is of the considered view that the claimant would not have attended regular work at least for six months. The Tribunal has fixed a sum of Rs.13,000/- as notional monthly income. The same can be taken into account and the compensation under the head 'loss of earnings' can be fixed at Rs.78,000/- [13000 * 6].

14. The compensation awarded under other heads is justified and



the same does not require the interference of this Court.

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15. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Medical Expenses	4,13,142/-	4,13,142/-
2.	Disability	1,20,000/-	1,68,000/-
3.	Pain and sufferings	30,000/-	50,000/-
4.	Loss of earnings	26,000/-	78,000/-
5.	Extra nourishment	10,000/-	25,000/-
6.	Loss of amenities	10,000/-	50,000/-
7.	Transport charges	4,000/-	15,000/-
8.	Attender charges	3,900/-	15,000/-
9.	Damage to clothes	1,000/-	1,000/-
	Total	6,18,042/-	8,15,142/-
	Rounded off to	6,18,000/-	8,15,200/-

16. The compensation awarded by the Tribunal at Rs.6,18,000/- is enhanced to Rs.8,15,200/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the



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date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced

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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.

17. It is made clear that the second respondent insurance company can pay the compensation and recover the same from the owner of the offending vehicle.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

26.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

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



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