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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1204 of 2024

R.Vasanthi

... Appellant

.VS.

1.S.Suvisedagan Aruliah

2.Bajaj Allianz General Insurance Company Limited,
New No.497 & 498, Isana Kattima Building,
5th Floor, Poonamallee High Road,
Arumbakkam,
Chennai – 600 106.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 19.12.2017 made in MACT OP No.164 of 2014 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.C.Munusamy

For Respondents : Mr.T.K.Premkumar for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MACT OP No.164 of 2014, dated 19.12.2017 has filed this appeal seeking for enhancement of compensation.



2.The case of the claimant is that on 17.12.2013, she was riding her two wheeler near Mandaveli temple and at about 11.15 hours, the offending vehicle which was a car was coming in the same direction and it was driven in a rash and negligent manner and it dashed on the rear side of the two wheeler. As a result, the claimant sustained Type V schatzker proximal tibia fracture right side with three part fracture proximal humerus right side. The claimant underwent treatment as an inpatient for fourteen days. She also underwent two operations. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.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 driver of the offending vehicle. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.59,500/- (rounded off Rs.60,000/-) under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Attender Charges	2,000
2.	Disability	25,500
3.	Loss of Income	12,000



S.No	Compensation awarded under the head	Amount (in Rs.)
4.	Pain and Sufferings	10,000
5.	Transport to hospital	5,000
6.	Extra Nourishment	5,000
	Total	59,500
	Rounded off	60,000

4.The above compensation was directed to be paid with interest at the rate of 9% per annum.

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

6.When the matter came up for hearing on 11.06.2024, this Court directed the entire records to be called for, since no compensation was granted to the claimant under the head of medical expenses. Accordingly, the records were called for and it reached this Court.

7.Heard Mr.C.Munusamy, learned counsel appearing on behalf of the appellant and Mr.T.K.Premkumar, learned counsel appearing on behalf of the 2nd respondent.

8.This Court has carefully considered the submissions made on either side



and also the materials available on record.

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9.The Disability Certificate that was given in favour of the claimant and which was marked as Ex.P16 assessed the disability as 95% partial and permanent disability. The Tribunal did not accept this Certificate and rather the Tribunal proceeded to refer to the relevant manual to evaluate the disability. Accordingly, the Tribunal found that the nature of injuries sustained by the claimant can be assessed at 13.5%. Out of the same, the Tribunal took 8.5% for calculating the compensation under the head of disability.

10.This Court is inclined to take the entire 13.5% and fix a sum of Rs.3,000/- per percentage. Accordingly, the compensation under the head of disability is fixed at Rs.40,500/- ($\text{Rs.3,000} \times 13.5\%$). The claimant came up with a case that she was a dubbing artist and she was earning a sum of Rs.20,000/- per month. There was no evidence available to prove the avocation of the claimant and the monthly salary earned by her. The Tribunal had fixed a sum of R.12,000/- under the head of loss of income. Considering the nature of injuries sustained by the claimant, this Court is inclined to fix a sum of Rs.15,000/- under this head ($\text{Rs.7,500} \times 2$).



11.The claimant has undergone treatment for nearly 14 days and underwent two operations. In view of the same, this Court is inclined to enhance the compensation under the head of Attender charges, Pain and Sufferings, Transportation to hospital and Extra nourishment to Rs.15,000/-, Rs.25,000/-, Rs.10,000/- and Rs.20,000/- respectively.

12.Insofar as the medical expenses are concerned, Exs.P4 and P5 were verified and it is found that the claimant has incurred a sum of Rs.3,20,968/-. In view of the same, a sum of Rs.3,20,968/- is fixed as compensation under the head of medical expenses.

13.Ex.P6 is the document that was marked through PW1 which shows that the Doctor has advised the claimant to undergo surgery in the form of implant exit for proximal tibia and humerus right side. For this surgery, the approximate cost is fixed at Rs.1,20,000/- At the time, when PW1 was examined during December 2014, there was no material to show that she actually underwent this surgery. However, considering the fact that the plate was implanted both in the tibia as well as the right shoulder, it has to be necessarily removed. Therefore, even though there is no evidence available to show the exact expenses incurred, this Court is inclined to fix a sum of Rs.60,000/- under



the head of future medical expenses.

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14. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Attender Charges	15,000
2.	Disability	40,500
3.	Loss of Income	15,000
4.	Pain and Sufferings	25,000
5.	Transportation to hospital	10,000
6.	Extra Nourishment	20,000
7.	Medical Bills	3,20,968
8.	Future Medical Expenses	60,000
	Total	5,06,468
	Rounder off	5,06,500

15. The compensation awarded by the tribunal at Rs.60,000/- is enhanced to Rs.5,06,500/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.5,06,500/-, 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 six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.4,46,500/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay



period of 1966 days as was ordered by this Court in C.M.P.No.7868 of 2024, dated 29.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimants. on such payment, the appellant is permitted to withdraw the same in due course.

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

16.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

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



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N. ANAND VENKATESH., J

SSR

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