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C.M.A.No.1277 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1277 of 2023

G.Vaidegi

... Appellant

..Vs..

1. N. Ashok Kumar

2. Reliance General Insurance Company Limited,
Rai's Tower, No.2054, 2nd Avenue,
Anna Nagar, Chennai 600 040

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 20.09.2022 passed in M.C.O.P.2018 of 2013 on the file of the V Court of Small Causes, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mrs. A. Subadra

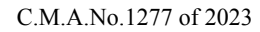
for Mr. A. Shanmugaraj

R1 : Ex parte

For R2 : Mr. G. Vasudevan

JUDGMENT

The appellant is the claimant in M.C.O.P.2018 of 2013 on the file of the V Court of Small Causes, Motor Accident Claims Tribunal, Chennai, and she filed the claim petition under Section 166 of the Motor



2. The case of the claimant is that on 25.08.2011 she was walking along L.B. Road, Adyar and at about 12.45 p.m. a motorcycle bearing Registration Number TN-22-BT-6535 came in the opposite direction and hit her, as a result of which she sustained injuries and was immediately rushed to Fortis Malar Hospital.

3. According to the claimant, the rash and negligent driving of the rider of the motorcycle bearing Registration Number TN-22-BT-6535 was the cause of the accident and that since the said motorcycle was insured with the second respondent, the Reliance General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to her.

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



C.M.A.No.1277 of 2023

WEB COPY

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the 1st respondent/ rider of two wheeler bearing Registration Number TN-22-BT-6535. Since the first respondent was not having a valid driving license on the date of accident, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.1,05,892/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the owner of the vehicle, vide its orders dated 20.09.2022.

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.

7. Heard Mrs. A. Subadra, learned counsel for the appellant and Mr. G. Vasudevan, learned counsel for the second respondent.

8. Mrs. A. Subadra, learned counsel for the appellant contended that though the Disability certificate (Ex.P13) shows that the claimant has



C.M.A.No.1277 of 2023

sustained 30% disability, the Tribunal had taken up only 15%. She also contended that the claimant was a tailor by profession and the Tribunal has not awarded just compensation to the claimant. She, therefore prayed for enhancement of compensation awarded by the Tribunal.

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

10. A perusal of the disability certificate issued by Dr.P.R.Danasekaran (P.W.2), Doctor and Assistant Professor in Orthopedic Department, Rajiv Gandhi Government General Hospital, Chennai, shows that the claimant had sustained 30% Partial Permanent Disability. The claimant initially took treatment in Fortis Malar Hospital immediately after the accident and an X-ray was taken. She had actually sustained a fracture on her right wrist and was treated as an out patient. Subsequently she took treatment in Orthopedic Hospital, Ashok Nagar.



C.M.A.No.1277 of 2023

Dr. P.R. Dhanasekaran (P.W.2) had not issued the partial permanent disability certificate in accordance with the guidelines of the Government of India and in compliance of the directions of this Court in *Arockiadoss vs. Syed Ibrahim 2. United India Insurance reported in 2022 (2) TN MAC 229*. Based on the evidence of P.W.2, the Tribunal had rightly fixed 15% as Partial Permanent Disability and awarded a sum of Rs.3000/- per percentage of disability. The claimant was a tailor by profession and would have been out of action for atleast three months on account of the accident and therefore, a sum of Rs.22,500/- (7,500 x 3) is awarded towards loss of income.

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

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability	45,000/-	45,000/-
2.	Medical bills	16,892/-	16,892/-
3.	Loss of income	7,500/-	22,500/-
4.	Pain and sufferings & Mental Agony	10,000/-	10,000/-



C.M.A.No.1277 of 2023

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
5.	Transportation Expenses	5,000/-	5,000/-
6.	Extra nourishment	10,000/-	10,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Attender charges	500/-	500/-
9.	Loss of Amenities	10,000/-	10,000/-
	TOTAL	1,05,892/-	1,20,892/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,05,892/- to Rs.1,20,892/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.1,05,892/- to Rs.1,20,892/-.
- 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.
- The second respondent, Reliance General Insurance Company



C.M.A.No.1277 of 2023

WEB COPY

Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.1,20,892/- (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 MCOP.No.2018 of 2013 on the file of the V Court of Small Causes, Motor Accident Claims Tribunal, Chennai, within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the first respondent/owner of the vehicle under the same cause of action.

- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.

28.08.2024

Index : Yes/No
Internet : Yes/No
bga

To

1. V Court of Small Causes, Motor Accident Claims Tribunal,
Chennai.
2. Reliance General Insurance Company Limited
Rai's Tower, No.2054, 2nd Avenue,
Anna Nagar, Chennai 600 040



C.M.A.No.1277 of 2023

Chennai 6

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



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C.M.A.No.1277 of 2023

R. HEMALATHA, J.

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C.M.A.No.1277 of 2023

28.08.2024