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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3055 of 2024

Mahalakshmi

... Appellant

Vs.

1.Deivam

S/o.Chinnasamy

2. The Oriental Insurance Company Ltd.,
No.94, III Floor, Jawaharlal Nehru road,
100 Feet Road, Vadapalani,
Chennai-26.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in MCOP. No.46/2021 dated 03.11.2022 on the file of the Motor Accidents Claims Tribunal, II Subordinate Judge, Palacode.

For Appellant : Mrs.Ramya V.Rao

For Respondents : Mr.J.Chandran for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal.



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2. The case of the claimant is that when she was standing in front of Chinnamthalipatti Sivanantham's shop in Karimangalam to Palacode Road, a two wheeler bearing Reg. No.TN 29 CY 3831 belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, hit against the appellant, due to which, she sustained greivous injuries and fractures over left leg, right humerus, neck, spine and multiple injuries all over the body.

3. The claimant underwent treatment as an in patient for nearly 30 days from 25.04.2021 to 05.05.2021 and an operation was also performed. The medical board assessed 18% disability, considering the nature of injury sustained by the claimant. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of 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



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negligent driving on the part of the rider of the two wheeler and awarded Rs.2,86,800/- towards compensation for the injuries under various heads.

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

6. The learned counsel for the appellant submitted that the appellant sustained fracture segmental femur and fracture in right humerus and surgeries were performed on the femur and humerus bones. However, the Tribunal has awarded Rs.5,000/- per percentage for the disability which is very meagre. Further, the Tribunal has awarded compensation under the others heads are also very low. Therefore, this Court may interfere with the impugned award and modify the same.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that due to rash and negligent driving of the driver, the accident had happened. The compensation awarded by the Tribunal in favour of the appellant is just and reasonable.



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Hence, this Court may dismiss the petition.

8. Heard Mrs.Ramya V.Rad, learned counsel for appellant/claimant and Mr.J.Chandran, learned counsel for 2nd respondent.

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

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

11. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.

12. According to the appellant, the first respondent riding the two wheeler in rash and negligent manner and dashed against the appellant and therefore, she sustained injuries. It is the main ground of the appellant that without considering the nature of injuries sustained by her,



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the Tribunal has awarded very meager amount in respect of disability, pain and suffering, attender charges, extra nourishment, transportation and loss of income from the treatment period. The appellant is 52 years old and she is running petti shop and earned monthly a sum of Rs.15,000/- In order to prove the income, she has produced the bank pass book before the Tribunal. Even then the Tribunal has awarded a sum of Rs.5000/- per percentage for the disability which is very meager and loss of income during the treatment period awarded by the Tribunal is also low and this Court is inclined to interfere with the same. Hence, this Court awarded a sum of Rs.9,000/- per percentage for the disability. Likewise, loss of income during the treatment period is also modified as Rs.10,000/- per month for three months. Considering the nature of injuries sustained by the claimant, this Court is also inclined to modify the award in respect of Pain and suffering, extra nourishment, attender charges, transportation and loss of income which the appellant is entitled for and the head viz., loss of amenities awarded by the Tribunal is unwarranted. Accordingly, the order passed by the Tribunal stands modified as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Disability	90,000	1,62,000 (Rs.9000 X 18%)
Pain and suffering	40,000	75,000
Extra nourishment	5,000	20,000
Attender charges	5,500	10,000
Medical expenses	1,25,300	1,25,300
Loss amenities	10,000	
Transportation	2,000	5,000
Loss of income	9,000	30,000 (Rs.10,000 X 3 months)
Total	2,86,800/-	4,27,300/-

13.The compensation awarded by the Tribunal at Rs.2,86,800/- is enhanced to Rs. 4,27,300/-. The second respondent Insurance company is directed to deposit the entire 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 weeks from the date of receipt of this judgment. 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.



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14. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

26.11.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To,
Motor Accidents Claims Tribunal, II Subordinate Judge, Palacode.



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M.DHANDAPANI.,J

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