IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3049 of 2024

Riswana ...Appellant

Vs.

1. Kasthuri

2. The National Insurance Company Ltd.,
Divisional Office, Situated at Jawaharlal Nehru Street,
Pudhucherry. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to allow this Civil Miscellaneous appeal by enhancing the compensation awarded in the fair and decreetal order dated 01.04.2024 passed in MCOP.No.272 of 2020 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Kallakuruchi.

For Appellant : Mr.Amar D Pandiya

For Respondents : Mr.S.Senthil Kumar, for R2
: Notice Dispensed with, for R1

JUDGEMENT

Challenging the judgment and decree dated 01.04.2024 made in MCOP.No.272 of 2020 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Kallakuruchi, the claimant is before this Court.

2. Mr.S.Senthil Kumar, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 1st remained exparte before the tribunal, notice to the 1st respondent is dispensed with.

4. It is the case of the appellant/claimant that, on 15.08.2020 at about 12.00 pm when the appellant was travelling as a pillion rider in a Honda Livo two wheeler bearing Reg.No.TN.25-BP-3348 on Salem to Chennai Main road, near Moongilpadi by-pass service road, at that time, a Maruti car bearing

Reg.No.TN.42-T-9193 owned by the 1st respondent insured with the 2nd respondent driven by its driver came in a rash and negligent manner and dashed against the two wheeler in which the appellant was travelling, due to which, she sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition seeking compensation of Rs.15,00,000/-. Before the tribunal, the claimant examined three witnesses viz., P.W.1 to P.W.3 and marked exhibits P.1 to P.29 and on the side of respondents, two witnesses viz., R.W.1 and R.W.2 were examined and exhibits R.1 to R.3 were marked and Disability certificate was marked as court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent, however, awarded a meagre compensation of Rs.1,33,414/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come up with this appeal seeking enhancement of compensation.

5. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, for which, the FIR, Ex.P1 came to be registered against the 1st respondent's driver and due to the above said accident, the appellant sustained multiple injuries and grievous injury in her right femur and two other persons lost their life. Further, though the tribunal held that the above accident happened due to the rash and negligent driving on the part of the driver of the 1st respondent, however, awarded a meagre compensation of Rs.1,33,414/- in favour of the appellant, solely on the ground that, there is a contradiction in between the Discharge Summary, Ex.P3 and Accident Register Ex.P.5 and thereby held that the injuries sustained by the appellant is not due to the above accident, which is wholly unsustainable. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

8. A perusal of the materials available on record reveal that the Tribunal had taken into consideration the discharge summary, which reveals that the patient was admitted only on 14.12.2020 and, therefore, the treatment cannot be said to be a continuous treatment given for the injury, which is alleged to have been the result of the accident. However, the appellant relies on the very same discharge summary to canvass the plea that the said injury was a result of the accident as could be evident from the discharge summary and, therefore, the appellant is entitled to enhanced compensation.

9. In view of the above contention, this Court to find out the injury sustained and its root, went into the discharge summary to find out whether the treatment was a continuous treatment, which could enure to the benefit of the claimant or that the view arrived at by the Tribunal is based on the record.

10. The crucial document in the entire case is the discharge summary. A perusal of Ex.P-3, the discharge summary reveals that the claimant/appellant was admitted on 14.12.2020 and was discharged on 19.12.2020. The admission on 14.12.2020 had weighed in the mind of the Tribunal to hold that for the first time, the claimant had taken treatment at the hospital and, therefore, the injury sustained cannot be related to the accident and, therefore, had not given the requisite compensation.

11. While the Tribunal has held that the injury was suffered in the accident, but no continuous treatment taken by the claimant and, therefore, the injury at the present point of time cannot be wholly be held to be on account on the accident. To arrive at the said finding, the Tribunal has held that she had not taken treatment immediately, but had taken delayed treatment, that too after four months and the delay in taking the treatment cannot be held against the insurer to give compensation. While giving the said finding, the Tribunal has gone on to give compensation under certain heads by treating that the claimant had suffered disability to the extent of 30% and a compensation of Rs.1,33,414/- has been awarded.

12. To put it bluntly, the Tribunal has blown both hot and cold on the very same aspect. While on the one hand, the Tribunal has held that the treatment not having been taken continuously the belated treatment cannot be put against the insurer and at the same stretch has held that the disability suffered had been fixed as due to the injuries suffered in the accident and compensation has been awarded.

13. The approach adopted by the Tribunal is wholly erroneous. Even a bare perusal of the discharge summary reveals that while being admitted the reason for the injury has been clearly spelt out and that there is a clear recording that the claimant had taken native treatment and had been administered with oil bandage for the fracture suffered. This clearly shows that the claimant had underwent some treatment, though not at the hospital, but elsewhere. Therefore, it cannot be held that the delay can form the basis to negate the claim of the claimant on the one hand, while giving a paltry sum on the other hand.

14. In fact, in the very same accident, the husband of the claimant had also suffered grievous injuries, for which he was hospitalised, which has also been noted by the Tribunal and at that point, as the spouse, the claimant was more interested in the treatment for her husband, while taking native treatment for herself and as a result of the same, the injury had not heeled properly. At a later point of time, when the injury did not heal any further, there was no choice left for the claimant, but to approach the hospital for medical aid at which point, the earlier treatment taken by the claimant has been narrated, which finds place in the discharge summary. Though the said discharge summary has been marked and the claimant has examined herself and Ex.C-1, the disability certificate of the claimant has also been marked, however, the insurance company has not taken any steps to dislodge the credibility of Ex.P-3 by examining the doctor. When in clear terms it has been spelt out in Ex.P-3 that the present treatment is a continuous one to the earlier native treatment taken by the claimant, the finding recorded by the Tribunal that the treatment is not continuous is wholly perverse, as the said finding is against the materials available on record. Therefore, in the said backdrop, this Court is of the

considered view that the discharge summary, Ex.P-3 clearly shows that the treatment is a continuous treatment and, therefore, the claimant is entitled for compensation under the heads under which normal compensation is being awarded to the victims.

15. A perusal of Ex.C.1, the Disability Certificate issued by the Medical board reveals that the appellant sustained 30% disability. Since, the accident is of the year 2020, this Court is inclined to fix a sum of Rs.7,000/- per percentage of disability. Hence, the amount under the head Disability stands enhanced to a sum of Rs.2,10,000/- (30% x Rs.7,000/- = Rs.2,10,000/-).

16. Further no compensation has been awarded under other heads. Hence, this Court awards a sum of Rs.50,000/-, Rs.20,000/-, Rs.25,000/-, Rs.10,000/-, Rs.1,000/- and Rs.10,000/- under the heads Pain and suffering, Nutritious expenses, Loss of income, Transportation expenses, Damages to clothes and Attender charges respectively.

17. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	25,000/-	**2,10,000/-**
Pain and sufferings	-	**50,000/-**
Nutritious expenses	-	**20,000/-**
Loss of income	-	**25,000/-**
Transportation expenses	-	**10,000/-**
Medical Bills	1,08,414/-	1,08,414/-
Damages to clothes	-	**1,000/-**
Attender charges	-	**10,000/-**
Total	**1,33,414/-**	**4,34,414/-**

18. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,33,414/-** to **Rs.4,34,414/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.272 of 2020 along with interest at the rate of 7.5% per annum from the date of claim

petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the Appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. No Costs.

25.11.2024

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

The Motor Accident Claims Tribunal (Additional District Judge),
Kallakuruchi.

M.DHANDAPANI, J.

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