

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2507 of 2016

K.Thulasi

.. Appellant/Petitioner

Versus

1.Mikthiar Begum

2.The New India Assurance Co. Ltd.,

Mylapore Division,

No.204, Kutcheri Road,

Mylapore, Chennai-600 004.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 16.04.2015 made in M.C.O.P.No.2943/2008 on the file of the Motor Accidents Claims Tribunal, (VI Judge, Small Causes Court), Chennai.

For Appellant : Mr.A.Shamugaraj

J U D G M E N T

Not satisfied with the award passed by the Tribunal, the appellant/claimant has preferred the Civil Miscellaneous Appeal, challenging the correctness of the impugned award dated 16.04.2015 made in M.C.O.P.No.2943/2008 on the file of the Motor Accidents Claims Tribunal, ( Small Causes Court), Chennai.

2.It is the case of the appellant/claimant that on 22.03.2007 at about 11.30 a.m., when she was walking along 4<sup>th</sup> street, Ragava Reddy Colony from west to east direction, the driver of the car bearing Registration No.TN-37-A-8676 came in a rash and negligent manner and caused the accident. Resultantly, the appellant/claimant sustained grievous injuries. Immediately, she was rushed to Government Royapettah Hospital and she was admitted as inpatient for two days. She was advised to take conservative treatment.

3.Learned counsel appearing for the appellant/claimant would submit that the appellant/claimant, after receipt of the award dated 16.04.2015 fixing a sum of Rs.2,54,900/- as against the claim of Rs.3,00,000/-, has approached this Court by filing this appeal, seeking enhancement on the ground that the learned

Tribunal ought to have awarded a sum of Rs.5,61,600/- under the head 'loss of earning' by applying multiplier method. Moreover, with regard to other heads namely pain and suffering, extra nourishment, transport to hospital, learned Tribunal has not fixed the reasonable amount and therefore, he prays for enhancement.

4.This Court is not able to find any infirmity in the impugned award. The injured has sustained injuries in her left foot, contusion in left ankle and multiple injuries all over the body. In order to prove the case, Dr.N.Sai Chandran was examined as PW2 . In his evidence, he has stated that the injured has suffered 40% partial and permanent disability. However, the finding has been given that he was not a doctor who treated the appellant/claimant. Therefore, the Tribunal considering the social economic and biological methods and accepting the percentage of disability given by the doctor for disability, came to the conclusion that the appellant had sustained lacerated injury over the dorsum of the left foot, also lacerated injury, left ankle causing fracture of the calcaneum bone on the left foot intra articles part. After she was treated conservatively, bone united, the injury over the dorsum of the foot was infected during the course of treatment, however, at present, there was scar in her left foot. The claimant has failed to prove functional disability. Therefore, the Tribunal has accepted the doctor's evidence and fixed 40% disability, for which, applying the ratio laid down by this Court in the case of National Insurance Company v. G.Ramesh reported in 2013 (2) TNMAC 583, has rightly determined a sum of Rs.3,000/- for each percentage of disability and accordingly a sum of Rs.1,20,000/- has been awarded towards disability at 40%. It is necessary to extract the said judgment as under:

"6.Considering the fact that the claimant is a youngster, aged 23 years, having suffered fracture of tibia and fibula bones and taking note of the fact that chances of recovery are bright at such age, this Court is inclined to interfere with the award of the Tribunal. However, this Court is of the view that acceptance of a sum of Rs.2,000/- per percentage of disability is incorrect, given the present day cost of living. It would be more appropriate to accept Rs.3,000/- per percentage of disability." taken Rs.3000/- per percentage of disability. "

5.With regard to the head 'loss of income', the learned Tribunal, considering the fact that the claimant/appellant has stated that she has been working as a weaver and was earning Rs.3,300/- per month and in order to prove her income, since PW3 was examined, the Tribunal has rightly fixed at Rs.3,300/- p.m.

as notional monthly income. On this score, a sum of Rs.9,900/- was fixed towards loss of income for three months. Considering the injuries sustained by the appellant/injured, the Tribunal has rightly awarded a sum of Rs.5,000/- each towards transportation, extra nourishment, damage to clothes medical expenses and attender charges and the same are hereby confirmed. The amounts awarded by the Tribunal at Rs.25,000/- each towards loss of amenities and pain and suffering, are also very reasonable and the same are hereby confirmed and a sum of Rs.50,000/- awarded towards loss of expectation of life, is also being reasonable and the same is hereby confirmed. This Court clearly finds no justification for enhancement of the amount awarded by the Tribunal in this appeal for the reason that no additional document has been produced before this Court and the claimant failed to show any functional disability. Therefore, the contention of the learned counsel for the appellant/injured, instead of applying percentage of disability, the multiplier method could have been adopted which would lead further enhancement in the quantum of compensation cannot be sustained. Hence, the appeal seeking enhancement, is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Motor Accidents Claims Tribunal,  
(VI Small Causes Court), Chennai.

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