

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.741 of 2016

K.Tharaga Soundari

... Appellant/Petitioner

Vs

1.S.Kotteeswaran

2.ICICI Lombard General Insurance Company Ltd.,
84/85, Arihant Plaza 1st Floor,
Waltax Road,
Chennai -3. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 08.12.2015 passed in M.C.O.P.No.1176 of 2011 on the file of the Motor Accident Claims Tribunal (V Small Causes Court), Chennai.

For Appellant : Mr.J.Ramkumar

For Respondents : Mrs.R.Sreevidhya (for R2)

No Appearance (for R1)

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.2,25,700/- awarded by the Tribunal for the injuries sustained by her in the accident, the appellant has preferred the Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellant is the claimant and she filed the claim petition claiming compensation of Rs.4,00,000/- for the injuries sustained by her in the accident occurred on 15.12.2010.

3. I heard Mr.J.Ramkumar, learned counsel for the appellant and Mrs.R.Sreevidhya, learned counsel for the second respondent and perused the entire materials available on record. No representation on behalf of the 1st respondent.

4. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the second respondent is liable to pay the compensation to the appellant. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the second respondent to pay the compensation is confirmed.

5. The only point that arises for consideration in this appeal is whether the appellant is entitled to get enhanced compensation and if so, to what extent.

6. In the accident, the appellant had sustained compound grade I fracture of both bones on her right leg without neurovascular deficit and had taken treatment as inpatient for 11 days at Soundarapandian Bone & Joint Hospital, Anna Nagar, Chennai. Ex.P3 is the discharge summary issued by the said hospital, where from it is seen that the appellant had taken treatment from 15.12.2010 to 25.10.2012 as inpatient and during treatment she underwent surgery also.

7. P.W.2-Dr.Mathialagan examined the appellant and assessed the disability at 45%. Ex.P8 is the disability certificate issued by him. Finding that P.W.2 assessed the disability after 3 years from the date of accident and the percentage of disability is on higher side, the Tribunal has taken the disability at 20% for calculating the amount towards disability. Since the appellant sustained compound grade I fracture of both bones of her right leg, the Tribunal erred in fixing the disability at 20%. Though P.W.2 assessed the disability at 45%, taking note of the fact that normally 5 to 10% would vary from Doctor to Doctor, this Court is of the opinion that it would be appropriate to fix the disability at 35% considering the nature of injuries. Fixing a sum of Rs.3,000/- per percentage of disability, a sum of Rs.1,05,000/- is awarded towards disability as against Rs.60,000/- awarded by the Tribunal.

8. The Tribunal awarded Rs.5,000/- towards transportation charges; Rs.66,500/- towards medical expenses; Rs.25,000/- towards future medical expenses; Rs.30,000/- towards pain and suffering; Rs.25,000/- towards loss of amenities and Rs.10,000/- towards extra nourishment. Considering the nature of injuries and the period of treatment undergone by the appellant, the amounts awarded under the aforesaid heads are reasonable and the same are maintained. No rebuttal evidence was adduced on the side of the second respondent to show that amounts awarded under the aforesaid heads are on the higher side.

9. The Tribunal awarded Rs.2,200/- towards attender charges. On a perusal of Ex.P3-discharge summary, it is seen that the appellant had taken treatment for 11 days as inpatient. She would have incurred more amount towards attender charges. Considering the period of treatment undergone by the appellant, this Court is inclined to award Rs.5,000/- towards attender charges as against Rs.2,200/-.

10. The Tribunal awarded Rs.12,000/- towards loss of earning during treatment. In the claim petition, it has been stated that at the time of accident, the appellant was aged 55 years and was earning Rs.6,000/- per month by doing tailoring work. No rebuttal evidence was adduced on the side of the second respondent insurance company to disprove the version of the appellant. If a person doing self employment like tailoring, he/she can earn at least Rs.6,000/- per month. Therefore, the Tribunal was right in fixing the notional income of the appellant at Rs.6,000/- per month. However, the Tribunal has taken two months period for calculating the loss of earning during treatment. As stated supra, in the accident, the appellant had sustained fracture on her right leg. Due to fracture, the appellant would not be able to work atleast for five months. Therefore, a sum of Rs.25,000/- is awarded towards loss of income as against Rs.12,000/- awarded by the Tribunal.

11. In view of the above discussion, a sum of Rs.2.25.700/- awarded by the Tribunal is enhanced to Rs.2,96,500/- as under:

Heads	Rs.
Disability	1,05,000.00
Transport charges	5,000.00
Medical expenses	66,500.00
Future medical expenses	25,000.00
Attender charges	5,000.00
Loss of earning during treatment	25,000.00
Pain and suffering	30,000.00
Loss of amenities	25,000.00
Extra-nourishment	10,000.00
Total	2,96,500.00

12. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.2,25,700/- awarded by the Tribunal is enhanced to Rs.2,96,500/- payable with interest at the rate of 7.5% per

annum from the date of numbering of the claim petition i.e., 31.03.2011 till the date of deposit. The second respondent is directed to deposit the modified compensation with interest as aforesaid before the Tribunal within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire compensation amount with accrued interest on filing proper application before the Tribunal. The appellant is directed to pay the deficit court fee and Registry is directed to draft the decree only after payment of the deficit court fee by the appellant.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal,
V Small Causes Court, Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.J.Ramkumar, Advocate Sr.No.67266

+1 cc to M/s.R.Sree Vidhya, Advocate Sr.No.67898

C.M.A.No.741 of 2016

CNR(CO)
CSL/22.03.2019

सत्यमेव जयते

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