

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2717 of 2018

J.Usharani

.. Appellant /Claimant

Vs.

1.M/s.M.S.Chinnakanni & Co.,
Represented by its Managing Partner,
4/801, Jalagandapuram Main Road,
Sandaipettai, Pappampadi, Omalur,
Salem - 636 306.

2.The New India Assurance Co. Ltd.,
Represented by its Manager, M.S.C. Complex,
1st Floor, Dharmapuri Main Road,
Omalur, Tamil Nadu - 636 455. ... Respondents /Respondent

(R1 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.03.2018 made in M.C.O.P.No.2700 of 2015, on the file of the Special Sub Court No.2, (Motor Accidents Claims Tribunal), Salem.

For Appellant : Mr.C.Kulanthaivel
For R2 : Mr.P.Neethi Perumal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 15.03.2018 made in M.C.O.P.No.2700 of 2015, on the file of Special Sub Court No.2, (Motor Accidents Claims Tribunal), Salem.

2.By consent of both parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.C.O.P.No.2700 of 2015, on the file of Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem. She filed the above claim petition claiming a sum of Rs.35,00,000/- as compensation for the injuries sustained by her in the accident that took place on 11.09.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tipper Lorry belonging to the first respondent and directed the second respondent/Insurance Company being the Insurer of the vehicle to pay a sum of Rs.19,99,794/- as compensation to the appellant/claimant.

5.Not being satisfied with the award dated 15.03.2018 made in M.C.O.P.No.2700 of 2015, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant was a beautician and also was doing tailoring work. The Tribunal has fixed only a meager sum of Rs.7,500/- as monthly income of the appellant. The Tribunal ought to have awarded amounts for loss of earning capacity, taking into consideration the fact that the appellant suffered 100% disability, though P.W.2/Doctor assessed 87.11%. The Tribunal failed to consider the evidence of P.W.2/Doctor who had deposed that the appellant is still having pain in the place of amputation. The appellant cannot do any work without help of others. The Tribunal ought to have awarded compensation for permanent disability apart from compensation for loss of earning power. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that amounts awarded by the Tribunal under various heads are excessive. The Tribunal accepting the disability certificate issued by P.W.2/Doctor, applied multiplier method and granted compensation. The amounts awarded by the Tribunal under various heads are excessive and hence the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the second respondent/Insurance Company and perused all the materials available on record.

9.From the materials on record, it is seen that due to the injuries sustained by the appellant in the accident, her left leg above knee was amputated. The Doctor who was examined as P.W.2 has certified that permanent disability of appellant is 87.11%. He also deposed that the appellant cannot do any work without the help of others. The Tribunal considering the evidence of P.W.2/Doctor and nature of disability, has applied multiplier method for granting compensation towards loss of income. The Tribunal in the absence of any evidence produced by the appellant to prove the income earned by her, fixed the

notional income of the appellant at Rs.7,500/- per month and added 25% towards future prospects and granted compensation for 87.11%, by applying the multiplier method. The contention of the learned counsel for the appellant that the Tribunal ought to have granted compensation for 100% disability, is not supported by any evidence, as P.W.2/Doctor has certified that the appellant suffered only 87.11%. The Tribunal has awarded a sum of Rs.2,00,000/- for fixing artificial leg, a sum of Rs.1,00,000/- for loss of amenities, a sum of Rs.1,00,000/- for pain and suffering and granted various amounts under different heads. The amounts granted under other heads are not meager. Thus, the learned counsel appearing for the appellant has not made out any case for enhancement of compensation. Hence, there is no error in the award passed by the Tribunal warranting interference by this Court.

10. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsa/krk

To

1. The Special Subordinate Judge No.2,
The Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 85547

C.M.A.No.2717 of 2018

RSV(CO)
GN(13/02/2019)