



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.2037 of 2013

Selvarani

... Appellant/Petitioner

Vs.

1. Jeyalakshmi

2. National Insurance Company Limited,
The Divisional Office,
No.1754, 56, Manogiyappa Theru,
Thanjavur - 613 009.

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MCOP No.38 of 2009 on the file of Motor Accident Claims Tribunal, Additional Subordinate Court, Thanjavur, dated 28.11.2012.

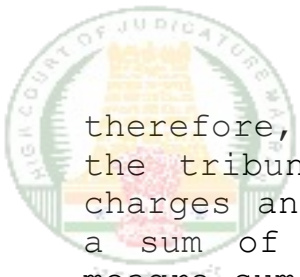
For Appellant	:	Mr.G.Prabhu Rajadurai
For Respondents	:	Mr.A.N.Ramanathan - for R1
	:	Mrs.P.Malini - for R2

JUDGMENT

Assailing over the judgment and decree passed by the Motor Accident Claims Tribunal, Additional Subordinate Court, Thanjavur, in M.C.O.P.No.38 of 2009 dated 28.11.2012, the present civil miscellaneous appeal has been filed.

2. Heard the learned Counsel appearing on either side and perused the records carefully.

3. It is a case of injury and the claimant/injured, being dissatisfied with the compensation of Rs.1,27,000/- awarded by the tribunal, is before this Court, seeking enhancement. According to the appellant/claimant, she was working as women Mazdoor (Chittal) in building construction work and she is earning Rs.4,500/- per month, at the time of accident, she was aged about 41 years and has sustained 42% of disability in the accident. The tribunal has also taken 42% but awarded only a meagre sum of Rs.42,000/- and



therefore, she prays for enhancement. It is her further case that the tribunal ought to have awarded extra nourishment, attendant charges and loss of income and the tribunal ought to have awarded a sum of Rs.1,00,000/- towards pain and suffering, however, a meagre sum was awarded under that head.

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4. It is seen from the records that the appellant/claimant, in consequence to the accident, sustained grievous injuries; fractures; and had also underwent surgery. From the Doctor's evidence, it is seen that her disability was assessed as 42% and the tribunal has taken 42%. For the said disability, a sum of Rs.42,000/- was awarded by the tribunal, which, in my considered opinion, is very meagre. In my opinion, it would be appropriate to give Rs.3000/- per percentage of disability, as per the judgment rendered by this Court in the decision reported in **2013 (2) TN MAC 583**, by fixing the disability at 42%. Therefore, the compensation under this head is enhanced from Rs.42,000/- to Rs.1,26,000/- (42% X Rs.3,000/-), i.e., Rs.84,000/- is enhanced towards disability.

5. Admittedly, at the time of accident, the appellant/claimant was aged about 41 years and this Court, going by the facts of the case and after perusing the entire records, is of the view that the pain and sufferings faced by the appellant/claimant is very high. However, the tribunal has awarded a sum of Rs.15,000/- towards pain and sufferings, which, in my considered opinion, is very meagre and therefore, this Court is inclined to enhance the same. In result, the compensation towards pain and sufferings is enhanced from Rs.15,000/- to Rs.50,000/-, i.e., Rs.35,000/- is enhanced towards pain and sufferings.

6. Admittedly, at the time of accident, the appellant/claimant was working as Chittal and earning a sum of Rs.4,500/- per month. However, the tribunal has not awarded any amount for loss of income. The appellant, who has suffered 42% of disability, would not be able to recover and go to work immediately and it would have taken minimum three months for her recovery. Therefore, this Court fixes the three months salary of the appellant/claimant as loss of income. Accordingly, compensation towards loss of income is fixed at Rs.13,500/- (Rs.4500 x 3 = Rs.13,500). Due to said injuries, the petitioner could not be able to do her work independently. So this Court is of the view that three months attendant charges should be granted to the appellant/claimant. Accordingly, compensation towards attendant charges is fixed at Rs.9,000/- (Rs.3,000 x 3 = Rs.9,000/-) and it is awarded separately and towards transportation, damages to clothes and nutrition, Rs.15,000/- is

7. Other than these, the compensation awarded by the



tribunal stands confirmed.

8. Accordingly the total compensation is modified and apportioned as hereunder :-

S.No	Head	Awarded by the tribunal	Awarded by this Court	Difference
1	Disability	Rs.42,000/-	Rs.1,26,000/-	Rs.84,000/-
2	Pain & sufferings	Rs.15,000/-	Rs.50,000/-	Rs.35,000/-
3	Loss of Income during treatment period	-	Rs.13,500/-	Rs.13,500/-
4	Medical Bills	Rs.55,000/-	Rs.55,000/-	Nil
5	Nutrition, Transportation & Damage to clothes	Rs.15,000/-	Rs.15,000/-	Nil
6	Attendant Charges	-	Rs.9,000/-	Rs.9,000/-
Total		Rs.1,27,000/-	Rs.2,68,500/-	Rs.1,41,500/-

9. In result, this civil miscellaneous appeal is partly allowed and

- The 2nd respondent/Insurance Company is directed to deposit the said award amount of Rs.2,68,500/- [Rupees Two Lakh Sixty Eight Thousand and Five Hundred only] towards compensation with interest @ 7.5% per annum, from the date of claim petition till the date of realization and costs, less the sum already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment.
- On such deposit, the appellant/claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by her, if any, by filing proper application before the Tribunal.
- There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar (CS-II)



To

1. The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.

2. The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 76355
+ 1 CC TO Mr.AN.RAMANATHAN, ADVOCATE IN SR No. 76653
+ 1 CC TO M/s.P.MALINI, ADVOCATE IN SR No. 76050

RM

TE/RSK/SAR-2 : 11/10/2018 : 4P/7C

C.M.A (MD) .No.2037 of 2013
31.07.2018