

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3431 of 2010

A.Pushpa

...Petitioner/Appellant

Vs

1.N.R.Sivakumar

R1 was set exparte in the trial court

2.ICICI Lombard General Insurance Co. Ltd.,

ICICI Bank Towers,

Bandra-Kurla Complex,

Mumbai - 400 051.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 18.08.2010 made in MCOP.No.4427 of 2006 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Petitioner : Mr.C.Munusamy

for M/s.C and K. Law firm

For Respondents: Mrs.R.Sreevidhya for R2

R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 18.08.2010 made in MCOP.No.4427 of 2006 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

2.The appellant is claimant in MCOP.No.4427 of 2006 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.3,50,000/- as compensation for the injuries sustained by her in the accident that took place on 06.11.2006. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the first respondent and directed second

respondent-insurer of the first respondent's vehicle to pay a sum of Rs.2,10,850/- as compensation to the appellant and recover the same from the first respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant submitted that, the appellant is a teacher and earning a sum of Rs.2,678/- per month and due to the accident she suffered head injury, fracture over left femur, contusion over left foot and abrasions over left hand. The Tribunal erred in awarding only a sum of Rs.10,721/- towards loss of income during the course of treatment period as against the reasonable claim of Rs.30,000/- The appellant examined P.W.2-Doctor and proved the nature of injuries and disability suffered by the appellant. The Tribunal erred in awarding only a sum of Rs.1,10,000/- towards disability when the Doctor assessed the disablement of the appellant as 65%. The amount awarded by the Tribunal under other heads are meagre. The Tribunal ought to have awarded compensation for loss of amenities and prayed for enhancement of compensation.

4. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal considering the disability suffered by the appellant awarded a sum of Rs.1,10,000/- towards disability, which is reasonable. The appellant did not let in valid evidence to prove the loss of income during and after treatment period. The Tribunal appreciating the materials on record has awarded the amount under the different heads are just compensation and the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused all the materials on record.

6. From the materials available on record, it is seen that the appellant has examined P.W.2/Doctor, who deposed the nature of injuries and treatment taken by the appellant. The appellant has marked Ex.P11/disability certificate and P.W.2-Doctor, deposed that the appellant suffered 60% disability. The Tribunal reduced the percentage of disability on the ground that P.W.2-Doctor was not the Doctor who treated the appellant and also not an Ortho Specialist. The Doctor has assessed disability only after four years from the date of accident. Hence, the percentage of disability taken by the Tribunal does not require any modification. It is also found from Ex.P8/loss of pay certificate produced by Sri Seva Mandir, which is a NGO, also running school that the appellant's monthly income is Rs.2,678/- and she has not

attended school for 9 months. The appellant is entitled for loss of income for the period of 9 months. Hence, the amount awarded by the Tribunal towards loss of income is modified to Rs.24,102/- (Rs.2,678/- X 9 months). The Tribunal has not awarded any amount towards loss of amenities and attendant charges and a sum of Rs.5,000/- is granted towards loss of amenities and attendant charges respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	10,712	24,102	Enhanced
2.	Transportation	5,000	5,000	Confirmed
3.	Extra Nourishment	5,000	5,000	Confirmed
4.	Damages to Cloth	500	500	Enhanced
5.	Medical Expenses	64,635	64,635	Confirmed
6.	Pain and Suffering	15,000	15,000	Confirmed
7.	Disability	1,10,000	1,10,000	Confirmed
8.	Loss of Amenities	-	5,000	Granted
9.	Attender Charges	-	5,000	Granted
	Total	Rs.2,10,847/- rounded to Rs.2,10,850/-	Rs.2,34,237/-	Enhanced by Rs.23,387/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,850/- is hereby enhanced to Rs.2,34,237/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest now determined by this Court at the first instance and recover the same from the first respondent, 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 is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (ADI-MDU)

//True Copy//

Sub Assistant Registrar

rst

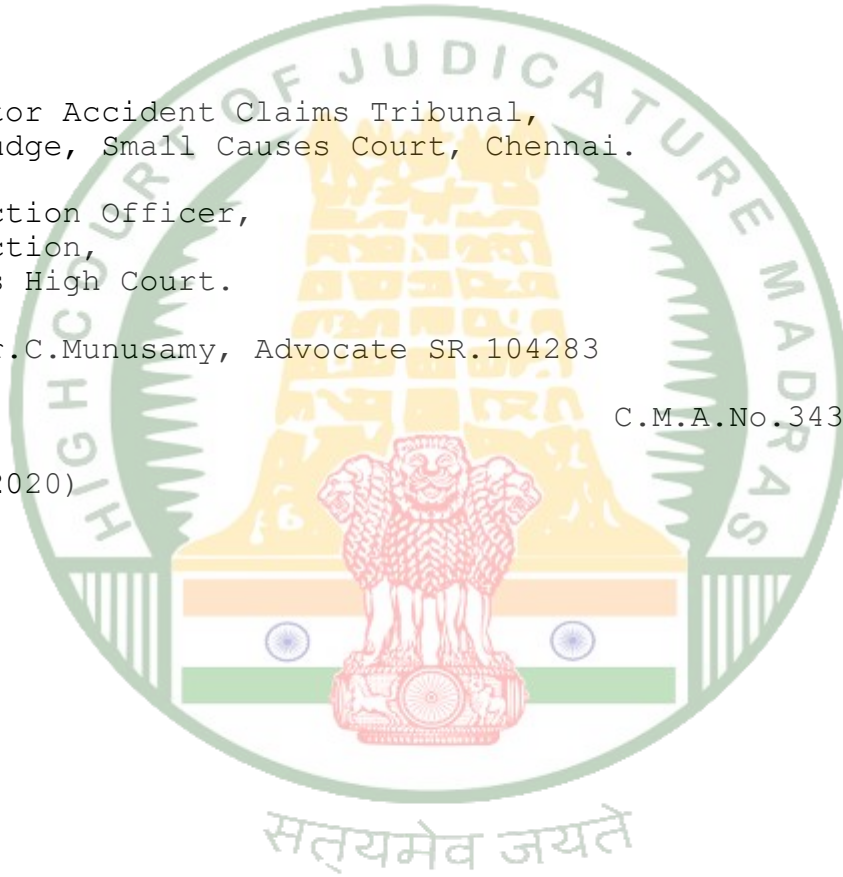
To

1. The Motor Accident Claims Tribunal,
III Judge, Small Causes Court, Chennai.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.C.Munusamy, Advocate SR.104283

C.M.A.No.3431 of 2010

SR(CO)
CB(17/09/2020)



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