

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1481 of 2015

D.Amudha

.. Appellant/claimant/
Petitioner

Vs.

1.S.M.Musahudeen

2.United India Insurance Co. Ltd.,

No.826, Annasalai, Chennai.

Now presently at

Silingi Building,

No.134, Greams Road,

Chennai 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.02.2015, made in M.C.O.P.No.1339 of 2006, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondents: Mr.C.Paranthaman (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-claimant, seeking enhancement of the compensation granted by the award dated 20.02.2015, made in M.C.O.P.No.1339 of 2006, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P.No.1339 of 2006, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.3,50,000/- as compensation for the injuries sustained by her in the accident that took place on 13.11.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the private bus belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.1,13,500/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.02.2015, made in M.C.O.P.No.1339 of 2006, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the appellant was working as a Coolie and earning a sum of Rs.4,500/- per month, but the Tribunal erroneously fixed a sum of Rs.3,000/- as monthly income. Due to the accident, the appellant sustained fracture of the right humerus Distal III for the bone union and arm movement was reduced by 40 degrees. She took treatment as in-patient in the Apollo Hospital from 13.11.2005 to 18.11.2005 and underwent surgery. For the injuries sustained by the appellant, P.W.2-Doctor assessed the percentage of disability at 50% and issued disability certificate, which was marked as Ex.P18. The Tribunal erroneously reduced the percentage of disability assessed by the Doctor to 35% without assigning any valid reasons. The Tribunal ought to have considered the deposition of P.W.2 Doctor regarding the surgery undergone and awarded reasonable compensation towards pain and suffering. The Tribunal has not considered the nature of injuries, treatment taken and the exhibits marked and has not awarded any amount towards medical expenses and awarded only a meager sum towards attender charges. The total compensation awarded by the Tribunal is meager and prayed for enhancement of the same.

6.Per contra, learned counsel appearing for the 2nd respondent contended that the Tribunal holding that the disability assessed by P.W.2 is on the higher side, reduced the same to 35% and granted compensation at the rate of Rs.1,800/- per percentage, which is not meager. In the absence of any medical bills, the Tribunal rightly has not awarded any amount towards medical expenses. The total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on

record.

8. From the materials on record, it is seen that the appellant contend that she was working as a Coolie and was earning a sum of Rs.150/- per day. The Tribunal, in the absence of any material evidence with regard to avocation and income of the appellant, fixed a sum of Rs.3,000/- as monthly income. The accident is of the year 2005 and the income fixed by the Tribunal is meager. Hence, a sum of Rs.5,000/- is fixed as monthly income of the appellant. In the accident, the appellant suffered fractures and has taken treatment as in-patient in hospital from 13.11.2005 to 18.11.2005. In support of the same, she has marked the discharge summary, OP chit issued by the Doctor, X-ray report and disability certificates as exhibits. For the injuries sustained in the accident, P.W.2 Doctor assessed the percentage of disability as 50%. The Tribunal reduced the same to 35% on the ground that the disability assessed by P.W.2-Doctor is on higher side. The same is not correct. Considering the nature of injuries, the appellant is entitled to compensation for 50% disability as assessed by P.W.2-Doctor and a sum of Rs.90,000/- is awarded towards disability at the rate of Rs.1,800/- per percentage. Due to the injuries sustained in the accident, the appellant would not have worked atleast for six months. Hence, the appellant is entitled to a sum of Rs.30,000/- (Rs.5,000/- x 6) towards loss of income for a period of 6 months. The amounts awarded by the Tribunal under the heads, extra nourishment, attender charges and loss of amenities are meager. The same are enhanced to Rs.5,000/- Rs.4,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under all the 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	15,000/-	30,000/-	enhanced
2.	Transportation	4,000/-	4,000/-	confirmed
3.	Extra nourishment	4,000/-	5,000/-	enhanced
4.	Damages to clothes	500/-	500/-	confirmed

5.	Attender charges	2,000/-	4,000/-	enhanced
6.	Loss of amenities	5,000/-	10,000/-	enhanced
7.	Pain and suffering	20,000/-	20,000/-	confirmed
8.	Disability	63,000/-	90,000/-	enhanced
	Total	1,13,500/-	1,63,500/-	Enhanced by Rs.50,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,13,500/- is enhanced to Rs.1,63,500/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1339 of 2006. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.A.A.Venkatesan Advocate sr101689
+1cc to Mr.C.Paranthaman Advocate sr100998

C.M.A.No.1481 of 2015

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