

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.15 of 2015

R.Gomathi .. Appellant/Petitioner in Trial Court

Vs.

1.G.Sampathkumar

(R1 was set exparte in the Tribunal)

2.ICICI Lombard General Insurance Co. Ltd.,

Chotta Bai centre, 140

3rd floor, Nungambakkam high road

Chennai-600 034. .. Respondents/Respondents in trial Court

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.08.2014 made in M.C.O.P.No.4635 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

For Appellant : Ms.V.Suguna for
Mr.C.Munuswamy

R1 : Exparte

For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 21.08.2014 made in M.C.O.P.No.4635 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai.

2.The appellant is claimant in M.C.O.P.No.4635 of 2012 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Chennai. She filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by

her in the accident that took place on 18.08.2012. 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 two wheeler and directed the 2nd respondent/Insurance Company being insurer of the said two wheeler to pay a sum of Rs.1,24,000/- as compensation to the appellant. 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/claimant contended that the appellant was working as a Security and was earning a sum of Rs.7,000/- per month. She has produced salary certificate to prove the same, but the Tribunal erred in fixing a sum of Rs.4,500/- per month. The appellant took treatment as in-patient in the hospital. The Tribunal did not grant any amount towards attendant charges. P.W.2/Doctor assessed the disability of the appellant at 45%. Though the Tribunal held that the appellant has sustained fracture on her both bones of left leg, erred in reducing the disability to 35%. The Tribunal ought to have adopted multiplier method for computing loss of earning power considering the injuries sustained by the appellant. The Tribunal erred in not awarding any amount towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal after considering the materials available on record, has awarded just compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation 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 2nd respondent and perused all the materials available on record.

6.From the materials available on record, it is seen that the appellant has contended that she was working as Security in Southernland Global Services at the time of accident and was earning a sum of Rs.7,000/- per month. To prove the avocation and income of the appellant, she has produced Ex.P6/salary certificate. The Tribunal rejecting the salary certificate produced by the appellant stating that August month salary was only Rs.6,463/-, fixed a sum of Rs.4,500/- as monthly income and awarded a sum of Rs.13,500/- (Rs.4,500/- X 3) towards loss of income, which is not proper. The appellant has substantiated her claim by marking Ex.P6/salary certificate. Hence, this Court fixes a sum of Rs.6,500/- as monthly income. Due to the

injuries, the appellant would not have worked atleast for six months. Therefore, a sum of Rs.39,000/- (Rs.6,500/- X 6) is granted towards loss of income. P.W.2/Doctor has assessed the disability of the appellant at 45%. The Tribunal reduced the same to 35% holding that the appellant suffered only fractures on both bones of left leg. The 1st respondent has not let in any evidence to disprove the contention of the appellant. Hence, the appellant is entitled to compensation for 45% disability. The appellant has not proved that she sustained functional disability. Hence, the Tribunal awarded compensation by adopting percentage method, which is proper. The accident is of the year 2012 and the Tribunal has granted a sum of Rs.2,000/- per percentage of disability, which is meagre. The appellant is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, a sum of Rs.1,35,000/- (Rs.3,000/- X 45%) is granted towards disability. The appellant took treatment as in-patient in the hospital from 20.08.2012 to 21.08.2012 and 22.08.2012 to 28.08.2012. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment taken by the appellant, this Court awards a sum of Rs.10,000/- towards attendant charges. The appellant has not proved that she requires future medical treatment for the injuries sustained by her, by marking documentary evidence. In such circumstances, she is not entitled for any compensation towards future medical expenses. A sum of Rs.5,500/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes and this Court awards a sum of Rs.10,000/- and Rs.2,000/- towards loss of amenities and damage to clothes. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby confirmed.

7.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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 or reduced
1.	Loss of income	13,500	39,000	Enhanced
2.	Transport to hospital	5,000	5,000	Confirmed

3.	Extra nourishment	5,500	10,000	Enhanced
4.	Damages to clothes	-	2,000	Granted
5.	Medical expenses	5,000	5,000	Confirmed
6.	Loss of amenities	-	10,000	Granted
7.	Pain and suffering	25,000	25,000	Confirmed
8.	Permanent disability	70,000	1,35,000	Enhanced
9.	Attendant charges	-	10,000	Granted
	Total	1,24,000	2,41,000	Enhanced by Rs.1,17,000/-

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,24,000/- is hereby enhanced to Rs.2,41,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with 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 enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1.The Special Subordinate Judge-I
The Motor Accident Claims Tribunal
Chennai.

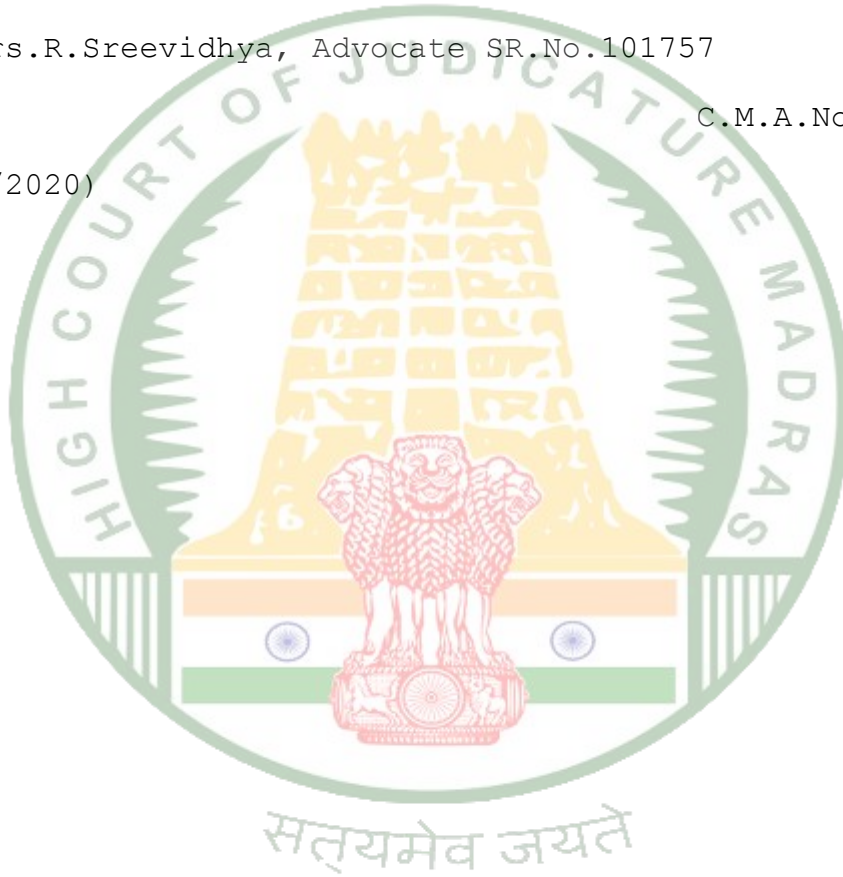
2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.C.Munuswamy, Advocate SR.No.100664

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.101757

C.M.A.No.15 of 2015

VBA (CO)
GMY (28/08/2020)



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