

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2252 of 2015

Susheela

.. Appellant / Petitioner

Vs.

1. K.Sivakumar

2. The Oriental Insurance Company Ltd.,
Motor III Part Claims Office,
Jawaharlal Nehru Salai,
SBI Upstairs,
Thiruvelllore.

.. Respondents / Respondents

(R1- Set Exparte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2014 made in M.C.O.P.No.178 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Poonamallee.

For Appellant : Ms.Y.Jayanthi Bhaskar for
Mr.J.Mahalingam

For R2 : Mr.G.Anandan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.04.2014 made in M.C.O.P.No.178 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Poonamallee.

2.The appellant is claimant in M.C.O.P.No.178 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Poonamallee. She filed the above claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 28.12.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.1,68,122/- as compensation to the appellant.

4.Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant was working as a cook and was earning a sum of Rs.5,000/- per month. Due to the injuries sustained by her in the accident she could not do the work as she was doing earlier. The Tribunal ought to have applied multiplier method and awarded more compensation. The appellant had taken treatment as in-patient at Rajiv Gandhi Government General Hospital for 37 days from 28.12.2012 to 02.02.2013. The Tribunal has not awarded any amount towards loss of amenities and amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

6.Per contra, Mr.G.Anandan, learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not proved that due to injuries, she is totally immobilized and unable to do any work. The percentage method adopted by the Tribunal is proper and the appellant is not entitled for compensation by applying multiplier method and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the second respondent and perused all the materials available on record.

8.The contention of the learned counsel appearing for the appellant is that the appellant was working as a cook and was earning a sum of Rs.5,000/- per month and due to fracture suffered by the appellant, she is not able to do any work as she was doing earlier and the appellant is entitled to get compensation by adapting multiplier method. From the materials available on record, it is seen that the appellant has not proved that she is totally immobilized or she is disabled functionally and that she could not do any work as she was doing earlier. In such circumstances, the percentage method adapted by

the Tribunal is proper. P.W.2/Doctor certified that the appellant suffered 45% of disability. The accident took place on 28.12.2012. The Tribunal has granted only a sum of Rs.2,000/- per percentage. The appellant is entitled to compensation at the rate of Rs.3,000/- per percentage. Thus, the amount awarded by the Tribunal towards permanent disability is modified as follows:

$$\text{Rs.3,000/-} \times 45\% \text{ of disability} = \text{Rs.1,35,000/-}$$

The appellant was taking treatment in hospital for 37 days as inpatient and suffered fracture. Therefore, a sum of Rs.7,400/- awarded by the Tribunal towards attendant charges is hereby enhanced to Rs.15,000/-. A sum of Rs.30,000/- awarded by the Tribunal towards loss of income is enhanced to Rs.60,000/-. The Tribunal has awarded a sum of Rs.20,000/- and Rs.5,000/- respectively towards pain and suffering and extra nourishment and the same are hereby enhanced to Rs.30,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. A sum of Rs.10,000/- is granted for loss of amenities. The amounts awarded by the Tribunal under other heads are confirmed. In view of the same, 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.	Injury	Rs.90,000/-	1,35,000/-	enhanced
2.	Transportation	Rs.5,000/-	5,000/-	confirmed
3.	Attendant's expenses	Rs.7,400/-	15,000/-	enhanced
4.	Medical expenses	Rs.10,722/-	Rs.10,722/-	confirmed
5.	Loss of income	Rs.30,000/-	Rs.60,000/-	enhanced
6.	Pain & suffering	Rs.20,000/-	Rs.30,000/-	enhanced
7.	Extra nourishment	Rs.5,000/-	Rs.25,000/-	enhanced
8.	Loss of amenities	-	Rs.10,000/-	granted
	Total	Rs.1,68,122/-	Rs.2,90,722/-	enhanced by Rs.1,22,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,68,122/- is hereby enhanced to Rs.2,90,722/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court 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 order. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Poonamallee.

Copy to:

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

+1 cc to M/s.G.Anandan, Advocate, S.R.No.5602

+2 cc to M/s.J.Mahalingam, Advocate, S.R.No.5986

C.M.A.No.2252 of 2015

SJ(CO)
SSM(31/05/2019)

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