

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 1676 of 2016

S. Vasantha Sugumar

..Appellant/ Petitioner

Vs.

1.S. Gayathri Uma Shankar

2.K.V. Rajesh
(R1&R2 exparte before the Tribunal)

3.ICICI Lombard General Insurance Co. Ltd.,
1st floor, Arihant Plaza,
No. 84/85, Waltax Road,
Parry's Corner,
Chennai 600 003.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.01.2016, made in M.C.O.P.No. 5643 of 2011, on the file of the V Judge, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. C. Munusamy

For Respondents: Ms. R. Sreevidhya (for R3)
R1&R2-Exparte

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 20.01.2016, made in M.C.O.P.No. 5643 of 2011, on the file of the V Judge, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is claimant in M.C.O.P.No. 5643 of 2011, on the file of the V Judge, (Motor Accident Claims Tribunal), Chennai. She filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 25.07.2011.

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 respondents 1 and 2 and directed the respondents 1 to 3 to jointly and severally pay a sum of Rs.12,21,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.01.2016, made in M.C.O.P.No. 5643 of 2011, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that due to the accident, the appellant suffered multiple fractures over left leg, degloving injury on left lower limb/upper limb, fractures over both hands besides other severe injuries. She took treatment as in-patient in Global Hospital and Health City, Chennai for sixty five days and has marked the medical expenditure bills incurred, as Exs.P1 to P5. The Tribunal erred in not awarding any amount towards future medical expenses. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal, considering the nature of injuries sustained by the appellant and the discharge summary marked as Ex.P2, awarded compensation towards loss of earning, attendant charges, damages for pain and suffering, loss of amenities and under other heads, which are not meager. 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 3rd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the appellant suffered multiple fractures all over the body. P.W.2 - Doctor has assessed 65% disability and issued disability certificate which was marked as Ex.P11. The Tribunal, reduced the percentage of disability to 40% on the ground that the percentage of disability assessed by P.W.2-Doctor cannot be considered for the whole body. The said reasoning is erroneous. Considering the evidence of P.W.2- Doctor and the X-rays marked as Exs.P4 and P10, the appellant is entitled to compensation for 65% disability. Accordingly, the amount awarded by the Tribunal towards disability is enhanced to a sum of Rs.1,95,000/- (Rs.3,000/- x 65%), at the rate of Rs.3,000/- per percentage of disability. It is an admitted fact that the appellant took

treatment as in-patient in Global Hospital and Health City, Chennai, for about 65 days, which is evident from Ex.P2 - discharge summary. The Tribunal without considering the same, has awarded a meager sum of Rs.13,000/- towards attendant charges. The appellant is entitled to a sum of Rs.65,000/- towards the said head. The appellant claimed that she was working as a Senior Staff Nurse at Global Hospital & Health City and earning a sum of Rs.23,000/- per month. She has also marked copy of photo identity card as Ex.P6 and salary slips as Exs.P7 and P8, to substantiate the same. Due to the injuries suffered and the treatment taken, the appellant would not have worked for a year. Considering the salary slips, the monthly income of the appellant is fixed at Rs.23,000/-. Thus, the amount awarded by the Tribunal towards loss of income is modified to Rs.2,76,000/- (Rs.23,000/- x 12 months). The Tribunal has awarded a lumpsum amount of Rs.35,000/- towards transportation, nourishing food and miscellaneous expenditure. The same is meager. The appellant is entitled to Rs.75,000/- towards the said head. It is the contention of the learned counsel appearing for the appellant that the Tribunal has not awarded any amount towards future medical expenses. The appellant has not proved that she requires further treatment. In the absence of any material evidence, the Tribunal has not awarded any amount towards future medical expenses. The said reasoning is proper and hence, the appellant is not entitled for the same. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Transportation, nourishing food & miscellaneous expenditures	35,000/-	75,000/-	Enhanced
2.	Damages for clothes	2,000/-	2,000/-	Confirmed
3.	Medical expenses	7,63,000/-	7,63,000/-	Confirmed
4.	Attendant charges	13,000/-	65,000/-	Enhanced
5.	Disability	1,20,000/-	1,95,000/-	Enhanced

6.	Loss of earning during the period of treatment	1,38,000/-	2,76,000/-	Enhanced
7.	Damages for pain and suffering	75,000/-	75,000/-	Confirmed
8.	Loss of amenities	75,000/-	75,000/-	Confirmed
	Total	12,21,000/-	15,26,000/-	Enhanced by Rs.3,05,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.12,21,000/- is enhanced to Rs.15,26,000/- along with interest and costs. The respondents 1 to 3 are jointly and severally 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. 5643 of 2011. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any, on the enhancement amount of Rs.3,05,000/-. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The V Judge,
(Motor Accident Claims Tribunal),
Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.C. Munusamy, Advocate SR.No. 104974

C.M.A.No. 1676 of 2016

A.SK(24/07/2020)