

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.396 of 2013

V.N.Rukmini

... Appellant / Petitioner

..Vs..

1. R.Vijayan

2. Reliance General Insurance
Company Limited,
No.6, Haddows Road,
Nungambakkam, Chennai.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 27.09.2012 in M.C.O.P.No.4983 of 2010 on the file of the Motor Accidents Claims Tribunal, the learned IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.K.Moorthy for R2
R1 - Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.4983 of 2010 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai. She filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for the injuries sustained by her in a road accident that took place on 26.09.2010, at about 16.30 hours, when the appellant/claimant was traveling as pillion rider in a scooty bearing Registration No,TN 02 AA 7651 at 100 Feet road.

2.According to the appellant/claimant, when she was nearing koyambedu Bridge towards north to south direction, at that time a speeding Maxi cab bearing Registration No. TN 02 U 8740 belonging to the first respondent and insured with the second respondent, hit the scooty, as result of which, she sustained grievous injuries all over her body. She further contended that

the rash and negligent driving of the driver of the Maxi cab bearing Registration No. TN 02 U 8740 was the cause of the accident and that, since, the said Maxi cab was insured with the second respondent, both of them are jointly and severally liable to pay compensation to her.

3.The owner of the Maxi cab bearing Registration No. TN 02 U 8740 remained absent before the Tribunal and therefore he was set ex-parte. The second respondent Reliance General Insurance Company Limited, Chennai contested the claim petition. The learned IV Judge, Small Causes Court, Chennai after analysing the evidence on record, has awarded a compensation of Rs.3,37,600/- together with interest at the rate of 7.5% per annum to the appellant/claimant.

4.The award passed by the Tribunal under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Transportation	Rs.5,000/-
2.	Extra Nourishment	Rs.5,000/-
3.	Medical Expenses	Rs.89,200/-
4.	Attender's charges	Rs.30,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Permanent disability	Rs.1,58,400/-
Total		Rs.3,37,600/-

5.Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant filed the present appeal under Section 173 of Motor Vehicles Act, 1988 seeking for enhancement of compensation.

6.Mr.K.Varadha Kamaraj, learned counsel for the appellant/claimant would contend that the appellant/claimant is a house wife and the monthly income was fixed by the Tribunal at Rs.4,000/-. The Tribunal has wrongly taken the functional disability as 30% inspite of severe injuries. Dr.Saichandran (PW2) has assessed the partial permanent disability as 75%. He further contended that the monthly income fixed by the Tribunal is very meagre.

7.His specific contention is that the appellant/claimant is a house wife and her work cannot be under estimated. The Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at

Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008. However, the Tribunal fixed a sum of Rs.4,000/- as notional income for the injured in the present case, without any rational application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra), wherein, Rs.6,500/- was fixed as monthly income for the vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008. Taking into consideration, the accident occurred in the year 2010, the house wife will do everything like when the vegetable vendor is selling. It is pertinent to point out that all the house hold chores are done by the house wife. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income of Rs.4,000/- fixed by the Tribunal to the claimant, who has been doing the house hold chores is not proper. Therefore, the purpose of the house hold chores cannot be considered below the work of selling the vegetables. The Tribunal atleast should be fixed the notional income of the injured to a sum of Rs.6,500/-, taking into consideration of the year of the accident took place on 26.09.2010.

8.Mrs.Sree Vidhya, learned counsel appearing for the second respondent, strictly opposed that for a house wife, awarding a sum of Rs.4,000/- per month as notional income is just and fair, since, she is not working anywhere except doing the house work at her home.

9.Dr.Saichandra (PW2) has assessed the permanent disability as 75%. However, the Tribunal has fixed the percentage of disability at 30% and awarded a sum of Rs1,58,400/- towards permanent disability. The doctor had deposed that the claimant had right side depressed temporal skull which caused weakness of both upper limbs with grade 4/5 and has headache, giddiness, memory disturbance, slurring of speech and lost smell sensation and the patient has disfigurement over face right side and L4, L5 disc prolapse causing compression of the L5 nerve caused weakness of both lower limbs with unstable gate walking. The claimant cannot stand for a while. She needs help of a person to move for mobility and daily activity and she is confined to home and entirely depending on others for her day to day needs. Wound over skull is not healed till date and there is oozing of sinus and causing bad smell, difficult to comb and problem for taking head bath. Due to head injury and loss of skull bone, she had decreased hearing power and allergic to heavy sound and also has sleeping problem. In view of the nature and severity of injuries sustained by the appellant/claimant, this court determines the over all body functional disability as 35%.

10. The Tribunal has fixed a sum of Rs.4,500/- per month as a notional income of the injured. The notional income fixed by the Tribunal is too low. The Tribunal should have given appropriate compensation towards increase in cost of living, while determining the notional income of the injured, for the accident occurred in the year 2010. The Hon'ble Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Therefore, taking into consideration, of the Hon'ble Apex Court Judgment in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, this Court re-fix the notional income of the injured as a sum of Rs.7,500/- per month.

11. The Tribunal has not awarded any amount towards her future prospects. As per the decision laid down in National Insurance Co. vs. Pranay sethi and others reported in 2017 (2) TNMAC 601, as the age of the claimant was 53 years, 10% should be added towards future prospects. The functional disability of the injured is fixed at 35%. The proper multiplier to be adopted in the instant case is 11 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of earning due to permanent disability

Calculation:

Income = Rs.7,500/-

10% Future Prospects = Rs.750/-

Total = Rs.7,500/- + Rs.750/- = Rs.8,250/-

Loss of earning:

= Rs.8,250/- x 11 x 12 x 35/100

= Rs.3,81,150/-

12. With regard to all other heads, the Tribunal has fixed a sum of Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.89,200/- towards medical expenses, Rs.30,000/- towards attender's charges and Rs.50,000/- towards pain and sufferings and the same are confirmed by this Court. The Tribunal has awarded a sum of Rs.1,58,400/- towards loss of earning due to permanent disability is not proper and this Court set aside the same and re-fixed the compensation towards permanent disability of the injured at Rs.4,35,600/-. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Transportation	Rs.5,000/-
2.	Extra Nourishment	Rs.5,000/-
3.	Medical Expenses	Rs.89,200/-
4.	Attender's charges	Rs.30,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Permanent disability	Rs.4,35,600/-
Total		Rs.6,14,800/-

Thus, the appellant/claimant is entitled to a sum of Rs.6,14,800/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii)The compensation awarded by the Tribunal is enhanced from Rs.3,37,600/- to Rs.6,14,800/-, which shall carry interest at the rate of 7.5% per annum.

(iii)The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The General Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

सत्यमेव जयते

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

WEB COPY

Sub Assistant Registrar

vkrr

To

- 1) The Motor Accidents Claims Tribunal,
The IV Judge,
Small Causes Court, Chennai.

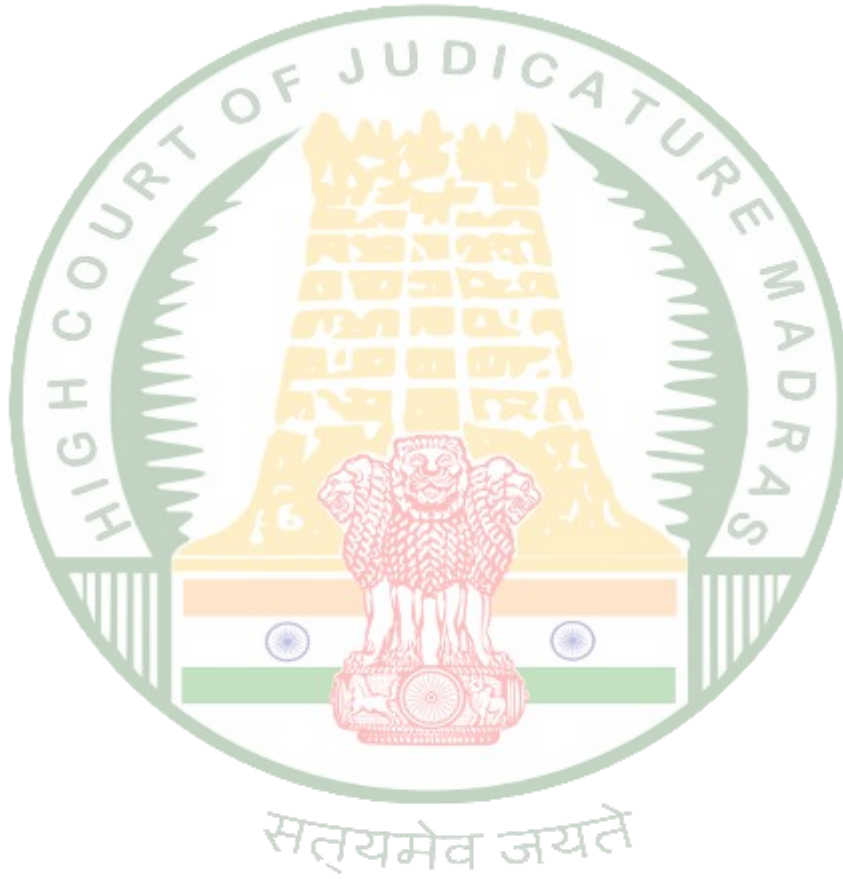
2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.K.Varada Kamaraj, Advocate, S.R.No.14351

+1 cc to Mr.K.Moorthy, Advocate, S.R.No.14320

C.M.A.No.396 of 2013

EV(CO)
SSM(23/05/2019)



WEB COPY