

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2175 of 2019

G.Kalaiselvi

.. Appellant

Vs.

1.K.Ravi

2.Reliance General Ins. Co., Ltd.,
6th Floor, 6 Haddows Road,
Nungambakkam, Chennai - 600 034

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2018 made in M.C.O.P.No.480 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant: Ms.Ramya V.Rao
For R2 : Mrs.C.Harini
for Mr.N.Vijayaraghavan

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 27.06.2018 made in M.C.O.P.No.480 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.480 of 2012 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. She filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 19.11.2011. 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 auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.2,20,600/- 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 contended that the appellant has sustained head injury and fracture of both bones of right forearm and other grievous injuries all over the body. The Tribunal without considering the same has awarded compensation towards disability by applying percentage method. The appellant could not continue her work after the accident as she was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards future loss of earning. PW2 Doctor assessed the disability of the appellant at 40%. The Tribunal reduced the same to 20% without any reason. The amounts awarded by the Tribunal towards attendant charges, pain & suffering, transportation, extra nourishment, loss of amenities and medical expenses are meagre and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability and therefore the Tribunal has rightly applied percentage method for awarding compensation towards disability. Further, PW2 is not the Doctor who treated the appellant. Therefore, the Tribunal reduced the percentage of disability from 40% to 20%. The Tribunal after considering both oral and documentary evidence in proper perspective, awarded 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 2nd respondent/Insurance Company 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 sustained fracture of both bones of right forearm. She has taken treatment in the hospital as in-patient at Government Royapettah Hospital, Chennai, from 19.11.2011 to 21.11.2011 for head injury. As per the discharge summary, the appellant has taken treatment in the hospital as in-patient from 27.11.2011 to 01.12.2011 for fracture of both bones of right forearm. PW2 Doctor assessed the disability of the appellant at 40% and the Tribunal reduced the same to 20%, holding that PW2 Doctor is not the Doctor who treated the appellant. The reason given by the Tribunal is not proper. The appellant is entitled to compensation for 40% disability. A sum of Rs.1,20,000/- (Rs.3,000/- x 40%) is granted towards disability by awarding

Rs.3,000/- per percentage. The appellant was taking treatment as in-patient for seven days. The Tribunal awarded only Rs.4,000/- as attendant charges. The same is meagre and is enhanced to Rs.10,000/-. The Tribunal considering the nature of injuries and period of treatment taken by the appellant, awarded compensation under other heads, which 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.	Towards transportation and nourishing food	10,000	10,000	Confirmed
2.	Attendant charges	4,000	10,000	Enhanced
3.	Medical expenses	6,641	6,641	Confirmed
4.	Future plate removing expenses	40,000	40,000	Confirmed
5.	Disability	60,000	1,20,000	Enhanced
6.	Loss of earning power	30,000	30,000	Confirmed
7.	Damages for pain, suffering and trauma	50,000	50,000	Confirmed
8.	Loss of amenities	20,000	20,000	Confirmed
	Total	Rs.2,20,641/- and the same is rounded off and fixed at Rs.2,20,600/-	Rs.2,86,641/- and the same is rounded off and fixed at Rs.2,86,600/-	Enhanced by Rs.66,000/-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal

at Rs.2,20,600/- is hereby enhanced to Rs.2,86,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to 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.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mtl

To

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

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

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 41465
+2ccs to Mr.A.N.Viswananthan , Advocate SR.No. 39996

A.SK (17/09/2019)

सत्यमेव जयते

C.M.A.No.2175 of 2019

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