

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1851 of 2019

Ammu

.. Appellant/Petitioner

Vs.

1. The State of Tamilnadu,  
Rep. by the Joint Director of Medical and  
Rural Health Service and Family Welfare Department,  
Thiruvavur District.
2. M/s. The Oriental Insurance Co. Ltd.,  
No.216/115, Prakasam Salai,  
Broadway, Chennai - 600 108. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.12.2018 made in M.C.O.P.No.7479 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.Mukund R.Pandiyar  
For Second Respondent : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 03.12.2018 made in M.C.O.P.No.7479 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.By consent of both parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.7479 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.10.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the ambulance belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.1,48,500/- as compensation to the appellant/claimant.

5.Not being satisfied with the award amount granted by the Tribunal dated 03.12.2018 made in M.C.O.P.No.7479 of 2016, the appellant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that P.W.3/Doctor assessed the percentage of disability suffered by the appellant at 15%. The Tribunal erroneously reduced the percentage of disability to 10% without any proper reason. The appellant has taken treatment in the hospital as in-patient for 7 days and the Tribunal has granted only a sum of Rs.3,500/- towards attendant charges, which is meager. The Tribunal has not granted any amount towards loss of cloth. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7.Per contra, Mr.J.Chandran, learned counsel appearing for the second respondent-Insurance Company contended that the Tribunal rightly reduced the percentage of disability from 15% to 10%, as the injuries sustained by the appellant are only simple in nature. The Tribunal has granted excessive sum of Rs.30,000/- towards loss of earning, in the absence of any material evidence to prove the income of the appellant. The amounts awarded by the Tribunal under different heads are excessive. Therefore, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

8.I have heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

9.From the materials on record it is seen that P.W.3/Doctor assessed the percentage of disability as suffered by the appellant at 15%. The Tribunal erroneously reduced the percentage of disability as suffered by the appellant to 10% on the ground that P.W.3 has not produced any documents and guidelines to show as to how he arrived the percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 15% of disability at the rate of Rs.3,000/- per percentage. Thus, the compensation awarded by the Tribunal towards disability is modified to

Rs.45,000/- [Rs.3,000/- X 15]. The appellant in the claim petition contended that she was a textile trader and was earning a sum of Rs.25,000/- per month. In the absence of any material evidence to prove the income of the appellant, the Tribunal fixed a sum of Rs.10,000/- as monthly income and awarded a sum of Rs.30,000/- towards loss of earning. The accident occurred in the year 2016. Therefore, a sum of Rs.30,000/- awarded by the Tribunal towards loss of earning is just and reasonable and the same is confirmed. The appellant has taken treatment in the hospital as in-patient for 7 days and the Tribunal has granted only a sum of Rs.3,500/- towards attendant charges, which is meager and the same is hereby enhanced to Rs.10,000/-. The Tribunal has not granted any amount towards loss of cloth. Therefore, a sum of Rs.2,000/- is granted by this Court towards loss of cloth. The amounts awarded by the Tribunal under other heads 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.   | Transportation and extra nourishment | 20,000/-                        | 20,000/-                          | confirmed                              |
| 2.   | Attendant charges                    | 3,500/-                         | 10,000/-                          | enhanced                               |
| 3.   | Medical expenses                     | 5,000/-                         | 5,000/-                           | confirmed                              |
| 4.   | Disability                           | 30,000/-                        | 45,000/-                          | enhanced                               |
| 5.   | Loss of earning                      | 30,000/-                        | 30,000/-                          | confirmed                              |
| 6.   | Pain and sufferings and trauma       | 40,000/-                        | 40,000/-                          | confirmed                              |
| 7.   | Loss of amenities                    | 20,000/-                        | 20,000/-                          | confirmed                              |
| 8.   | Loss of cloth                        | -                               | 2,000/-                           | granted                                |
|      | Total                                | Rs.1,48,500/-                   | Rs.1,72,000/-                     | enhanced by Rs.23,500/-                |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,48,500/- is hereby enhanced to Rs.1,72,000/- together with interest at the rate of 7.5% per annum from the date of petition

till the date of deposit. The second 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, to the credit of M.C.O.P.No.7479 of 2016 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. On such deposit, the Tribunal is directed to deposit the enhanced award amount directly to the appellant's account maintained at Federal Bank, Chengalpattu Branch, 113A, G.S.T. Road, Opp. Saradha Lodge, Chengalpattu, in the following account number, within two weeks thereafter.

| Name of the appellant | Name of the Bank                                                                                    | IFSC code   | Account No.    |
|-----------------------|-----------------------------------------------------------------------------------------------------|-------------|----------------|
| Mrs.Ammu.S            | Federal Bank,<br>Chengalpattu Branch,<br>113A, G.S.T. Road,<br>Opp. Saradha Lodge,<br>Chengalpattu. | FDRL0001657 | 16570100027030 |

No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

krk

To

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

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

+lcc to Mr.Mukund R.Pandiyan, Advocate, S.R.No.25882/19

+lcc to Mr.J.Chandran, Advocate, S.R.No.25882/19

C.M.A.No.1851 of 2019

SSD/(CO)  
vrn/21.05.2019