

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2453 of 2019

Neelambal

... Appellant/Petitioner

Vs.

1.R.Viswaprasath

2.The Divisional Manager,

I.C.I.C.I Lombard General Insurance Company Ltd.,

Priya Prasath Complex, 2nd Floor,

Annasalai, Vellore Town.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.11.2018 and made in M.C.O.P.No.255/2014 on the file of the Motor Accident Claims Tribunal, the learned Chief Judicial Magistrate, Vellore.

For Appellant

: Mr.R.Nalliyappan

For Respondents

: Mr.K.Poomalai for R2

R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.255 of 2014, dated 19.11.2018, on the file of the learned Chief judicial Magistrate, (Motor Accidents Claims Tribunal), Vellore.

2. The appellant is the claimant in M.C.O.P.No.255 of 2014, on the file of the learned Chief judicial Magistrate (Motor Accidents Claims Tribunal), Vellore. She filed the above MCOP, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in a road accident. On 19.09.2013, at about 06.00 hrs, the appellant was traveling along with other passengers in an auto bearing Reg.No.TN.23-BD-9939, proceeding from Senguttaito Pallur in Vellore to Chittoor Main road, at that time, while nearing Tel Quarters opp to Kingston Engineering College, the driver of the said auto drove the vehicle in a rash and negligent manner, with high speed and lost his control over the auto. Due to the same, the auto capsized on the left side of the road, as a result of which, the

appellant sustained grievous injuries. Thereafter, the appellant was admitted as an inpatient in Vellore Medical College. The injured is aged about 55 years at the time of accident and she was working as a coolie at Lucky Company in Senguttai.

3.The Tribunal upon considering the pleadings, oral and documentary evidences adduced on the side of the injured held that the accident occurred due to the rash and negligent driving of the driver of the said auto belonging to the first respondent and directed the second respondent-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.89,000/- as compensation to the appellant/claimant. Based on the appellant's age, occupation and income, the tribunal awarded a sum of Rs.89,000/- under the following heads:

S.No	Description	Amount awarded by Tribunal
1.	Disability for 25%	Rs.75,000/-
2.	Transportation expences	Rs.2,000/-
3.	Estra nourishment	Rs.5,000/-
4.	Pain and sufferings	Rs.5,000/-
5.	Damages of cloths	Rs.2,000/-
	Total	Rs.89,000/-

4. Before the Tribunal, on the side of the claimant, witnesses P.W.1 and P.W.2 were examined and the following exhibits were marked:

- (a) Ex.P1 : Copy the of FIR
- (b) Ex.P2 : Copy of the R.C Book
- (c) Ex.P3 : Copy of the Insurance Police
- (d) Ex.P4 : Copy of the driving liecense
- (e) Ex.P5 : Discharge summary
- (f) Ex.P6 : Copy of the Adhar card
- (g) Ex.P7 : Copy of the pan card
- (h) Ex.P8 : Copy of the Bank pass book

On the side of the Respondents, no one was examined and no exhibits were marked.

5. Aggrieved by the award passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act for enhancement.

6. The learned counsel for the appellant submitted due to the accident she has become permanently disabled and she is not able to earn as herself. He submitted that the appellant would have risen to great heights in her job and achieved her goal if she has not involved in the accident. The learned counsel for the appellant further contented that the Doctor who examined the appellant had issued disability certificate as 25%. Though the tribunal has taken up the same disability and awarded a sum of Rs.75,000/- for disability (Disability at 25%, at the rate of Rs.3,000/- per percentage), tribunal has not awarded any compensation for loss of amenities, loss of the earning and attender's charges.

7. The learned counsel appearing for the respondents on the other hand contended that the driver of the said auto was not at fault and the said accident was an unexpected on terms as "Act of God". His further grievance is that there is no proof for occupation or income of the injured and in the absence of any details, the Tribunal erroneously fixed the monthly income without any basis and on the whole, the sum awarded by the Tribunal under other heads also excessive. He further submitted that the first respondent is not liable to pay any compensation to the appellant either factually, legally or contractually.

8. On perusal of records, it is seen that the particulars have been furnished by the claimant regarding her age, income and occupation and the same were taken into consideration by the Tribunal and this Court also concurs with the findings of the Tribunal. The injured was aged about 55 years at the time of accident and she was working in a private company, earning a sum of Rs.10,000/- per month. The injured has sustained 30% disability, but, the tribunal has considered the disability only at 25%.

9. Considering its submission made by the learned counsel for the appellant submitted that the appellant was taking treatment as outpatient, and the Tribunal has not granted any compensation towards attender's charges, this Court inclined to grant a sum of Rs.10,000/- towards attender's. Likewise, a sum of Rs.10,000/- and Rs.13,000/- is awarded under the heads "loss of amenities" and "loss of earning" respectively. This Court also inclined to enhance the amount awarded by the Tribunal towards pain and suffering, extra nourishment to some extent, hence the same are hereby enhanced to Rs.15,000/- each.

10. Hence the total compensation payable to the appellant/claimant is as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of diability 25% X 3000	Rs.75,000/-	Rs.75,000/-
2.	Transprot	Rs.2,000/-	Rs .5,000/-
3.	Extra Nourishment	Rs.5,000/-	Rs.15,000/-
4.	Pain and sufferings	Rs.5,000/-	Rs.15,000/-
5.	Clothes damages	Rs.2,000/-	Rs .3,000/-
6.	Attender Charges	-	Rs.10,000/-
7.	Loss of amenities	-	Rs.10,000/-
8.	Loss of Earning	-	Rs.13,000/-
	Total	Rs.89,000/-	Rs.1,46,000/-

11. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.89,000/- is enhanced to Rs.1,46,000/-. No costs.

12. The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four 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 NEFT or RTGS within a period of one week thereon. The claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (C.S.IX)

/True Copy/

Sub Assistant Registrar

To

1. The Chief judicial Magistrate
(The Motor Accident Claims Tribunal), Vellore.

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

+1 cc to M/s.R.Nalliyappan, Advocate Sr.No. 47343

+1 cc to M/s.K.Poomalai, Advocate Sr.No. 48178

AKM/07.02.2020/5P-5C /

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