

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3211 of 2019

in

C.M.P.No.17094 of 2019

Lakshmi

...Appellant/Claimant

vs.

1. N.Loganathan

2. United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai-600 006.

...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.09.2018 in MCOP.No.2007 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court-II, Small Causes Court , Chennai.

For Appellant : Mr.M.Malar

For Respondents : Mr.S.Arunkumar - R2
R1- Exparte

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the claimant seeking enhancement of compensation in the impugned award dated 11.09.2018 passed by the Motor Accident Claims Tribunal, Special Sub Court-II, Small Causes Court, Chennai in MCOP.No.2007 of 2017.

Brief facts leading to the filing of this appeal:

2. The Appellant sustained injuries as a result of an accident that took place on 25.03.2017, caused by a Motor Cycle bearing Registration No.TN 05 AZ 8183 owned by the first respondent and insured with the second respondent. The accident happened when the Appellant/claimant was a pedestrian about to cross the road from North to South at EVR Road and Gengu Reddy

Subway Junction. The motor cycle (insured vehicle) coming from the west to east direction on the same road dashed against the Appellant/claimant. As a result of the same, the Appellant/claimant sustained injuries.

3. The Appellant/claimant preferred a claim before the Motor Vehicle Claims Tribunal, (Special Court No.2), Small Causes Court, Chennai in M.C.O.P.No.2007 of 2017 seeking compensation of Rs.35,00,000/- for the injuries sustained by him as a result of the accident.

4. The Tribunal, by its award dated 11.09.2018, in M.C.O.P.No.2007 of 2017, directed the second respondent/Insurance Company, to pay the Appellant/claimant, a sum of Rs.1,09,500/- together with interest at the rate of 7.5% per annum, from the date of filing of the claim petition till the date of realization.

5. Aggrieved by the award dated 11.09.2018, passed by the Motor Accident Claims Tribunal in MCOP.No.2007 of 2017, this appeal has been filed by the Appellant/claimant.

6. Heard Mrs. M.Malar, learned counsel for the Appellant and Mr.S.Arunkumar, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

Discussion:

7. The Appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal, has sought for enhancement in this appeal.

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. According to the Appellant, even though the Doctor has assessed the disability of the Appellant at 20%, the Tribunal has erroneously on its own without any basis, reduced the disability to 15%. It is also the case of the Appellant/claimant that the Tribunal has failed to adopt the multiplier method while assessing the compensation payable to the Appellant/claimant. It is also her case that the compensation awarded by the Tribunal under various heads is inadequate and it has to be enhanced.

10. The Appellant/claimant has sustained fracture of right clavicle and laceration in the right arm and the right leg as a result of an accident.

11. Before the Tribunal, the Appellant/claimant has filed fifteen documents which were marked as Exhibits P1 to P15 and two witnesses were examined viz., PW1 - the Appellant herself

and PW2 - the Doctor who issued the disability certificate. On the side of the second respondent insurance company, neither any witness was examined nor any document filed.

12. The Appellant/claimant had claimed that she was doing house keeping work and was earning a monthly income of Rs.15,000/-. Since no documentary evidence was produced by the Appellant/claimant to prove that she was earning a monthly income of Rs.15,000/-, the Tribunal had fixed the notional monthly income of the Appellant/claimant at Rs.6,500/-. The accident happened in the year 2017, and considering the year of the accident and the nature of the avocation of the Appellant/claimant, the Tribunal ought to have fixed the notional monthly income of the Appellant/claimant at a higher sum. Considering the year of the accident, avocation and the cost inflation index for the year 2017, we fix the monthly notional income of the Appellant at Rs.12,000/- instead of Rs.6,500/- fixed by the Tribunal under the impugned award.

13. The Appellant/claimant has suffered only fracture of right clavicle and sustained laceration injury in her right arm and right leg. Therefore, the Tribunal has rightly not applied the multiplier method to the Appellant/claimant for the injuries sustained by her as a result of an accident. The Doctor (P.W.2), who examined the Appellant/claimant, has issued disability certificate, which was marked as Ex.P14, certifying that the Appellant/claimant has suffered 20% disability. But, the Tribunal, on its own, without any basis, has reduced the disability of the Appellant/claimant from 20% to 15%. No reasons have also been given by the Tribunal for reducing the disability of the claimant contrary to the findings of the Doctor. No contra evidence has also been produced by the second respondent-Insurance Company, to disprove the disability certificate issued by the Doctor(P.W.2). When an expert opinion regarding the disability of the Appellant/claimant is available, which has not been disproved by any contra evidence, the Tribunal ought to have accepted the same. But in the case on hand, the Tribunal has erroneously reduced the disability of the Appellant/claimant from 20% to 15%. Accordingly, we set-aside the finding of the Tribunal that the Appellant/claimant has suffered only 15% disability and we accept the finding of the Doctor(P.W.2) who has assessed the disability of the Appellant/claimant as 20%. Accordingly we assess the disability of the Appellant/claimant at 20%. The year of the accident being 2017, the Tribunal has rightly calculated disability compensation at Rs.3,000/- per percentage of disability and we do not find any infirmity in the same. Accordingly, the disability compensation is enhanced to Rs.60,000/- calculated based on 20% disability at Rs.3,000/- per percentage of disability.

14. The Appellant/claimant is a house keeper. Having sustained fracture, as a result of an accident, she would have been out of work for atleast a minimum period of three months. But the Tribunal has awarded compensation towards loss of income only for one month. It is an erroneous finding. Accordingly, we award a sum of Rs.36,000/- as compensation to the Appellant/claimant towards loss of income for three months calculated at Rs.12,000/- per month.

15. The Tribunal has awarded compensation towards pain and suffering, transportation, extra nourishment, damage to clothing, medical expenses, attender charges and loss of amenities and the compensation awarded under those heads to the Appellant/claimant is in accordance with settled principles of law.

16. In view of the reassessment of the monthly income of the Appellant/claimant and loss of income, the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Compensation for disability	45,000/-	60,000/-
Loss of Pain and sufferings	15,000/-	15,000/-
Loss of income	6,500/- (for one month)	36,000/- (for three months)
Transport to Hospital	2,000/-	2,000/-
Extra Nourishment	15,000/-	15,000/-
Damage to clothing	3,000/-	3,000/-
Medical expenses	3,000/-	3,000/-
Attender Charges	5,000/-	5,000/-
Loss of amenities	15,000/-	15,000/-
Total	1,09,500/-	1,54,000/-

Conclusion:

17. In the result, the appeal is partly allowed and the rate of interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. The Second respondent is directed to deposit the entire award amount as per the order of this Court, before the Tribunal along with interest and cost after deducting the amount, already deposited if any, to the credit of MCOP.No.2007

of 2017 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the Appellant/claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special Sub Court-II, Small Causes Court,
Chennai.

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

+1cc to M/s.M.Malar , Advocate SR.No. 85139

+1cc to Mr.S.Arunkumar , Advocate SR.No. 84658

C.M.A.No.3211 of 2019
in

C.M.P.No.17094 of 2019

cp

A.SK(18/03/2020)