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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.853 of 2018

Preethi

.. Appellant

Vs.

1.M/s.JDS Food Products Pvt. Ltd.,
No.22, Sirukaveripakkam,
Kanchipuram - 631 502.

2.The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor,
Old No.115, New No.216,
Prakasam Road, Broadway,
Chennai - 600 018.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2016 made in M.C.O.P.No.2782 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R1 : No appearance

For R2 : Mr.S.Manohar

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 28.11.2016 made in M.C.O.P.No.2782 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2782 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. The appellant filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by her in the accident that took place on



04.03.2014. 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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay a sum of Rs.21,02,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

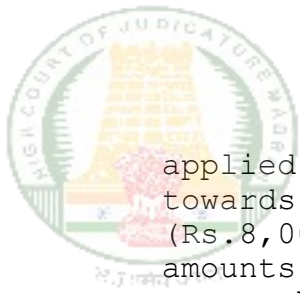
3.Though the learned counsel appearing for the appellant raised various grounds in the appeal with regard to enhancement of compensation, when the matter is taken up for hearing, he is questioning only the monthly income fixed by the Tribunal.

4.The learned counsel appearing for the appellant contended that the appellant was a vegetable vendor and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed a meagre sum of Rs.6,500/- as monthly income of the appellant and prayed for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not filed any document to prove his avocation and income. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant and erroneously awarded 50% enhancement towards future prospects instead of 40%. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant contended that she was a vegetable vendor and was earning a sum of Rs.500/- per day. She has failed to substantiate the said contention. In view of the same, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.8,000/- as monthly income of the appellant. The appellant was aged 27 years at the time of the accident. She is entitled to only 40% enhancement towards future prospects. P.W.2/Doctor certified the disability of the appellant at 85% for amputation of right hand and 35% for fracture of right thigh bone. The Tribunal has fixed total functional disability as 87% and



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applied multiplier 17. The amount awarded by the Tribunal towards future earning capacity is modified to Rs.19,87,776/- (Rs.8,000/- + 3,200 (Rs.8,000/- x 40%) x 12 x 17 X 87%). The amounts awarded by the Tribunal under other heads 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.	Transportation, nourishing food and miscellaneous expenditure	50,000	50,000	Confirmed
2.	Medical expenses	25,000	25,000	Confirmed
3.	Future medical expenses	50,000	50,000	Confirmed
4.	Attendant charges	20,000	20,000	Confirmed
5.	Loss of future earning capacity/power	17,30,430	19,87,776	Enhanced
6.	Loss of earning during the period of treatment	26,000	26,000	Confirmed
7.	Damages for pain, suffering and trauma	1,00,000	1,00,000	Confirmed
8.	Loss of amenities	1,00,000	1,00,000	Confirmed
	Total	Rs.21,01,430/- rounded off to Rs.21,02,000/-	Rs.23,58,776/-	Enhanced by Rs.2,56,776/-



8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,02,000/- is hereby enhanced to Rs.23,58,776/- 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 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 32409

+1cc to Mr.S.Manohar, Advocate, S.R.No. 32193

C.M.A.No.853 of 2018

SS(CO)
GN(06/01/2020)