

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4568 of 2019

Mary Gerald ... Appellant /Petitioner

Vs.

1.M/s.Thirumal Alagu Transports,
74/173, Housing Board,
KRR Nagar, Theni. ...Respondent-1/Respondnet-1

2.New India Assurance Company Limited,
Third party cell, Bombay Mutual Building,
232/6, NSC Bose Road,
Chennai - 600 001. ... Respondent-2/Respondent-2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.08.2012 made in M.C.O.P.No.994 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant : Mr.Joseph Mathew

For R2 : Ms.C.Sangamithirai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 24.08.2012 made in M.C.O.P.No.994 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

2. By consent of both the 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.994 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee. She filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.06.2007.

4. 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 bus belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.2,00,000/- as compensation to the appellant.

5. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel appearing for the appellant contended that though P.W.2/Doctor assessed 40% partial permanent disability, the Tribunal granted only a sum of Rs.70,000/- towards partial permanent disability. The same is meagre. The appellant was working as a Teacher and earning a sum of Rs.17,000/- per month and the Tribunal has not granted any amount towards loss of income. The appellant has taken treatment in the hospital as in-patient for 12 days from 17.06.2007 to 28.06.2007 and the Tribunal has not granted any amount towards attendant charges and loss of amenities. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent contended that the appellant has not produced any document to prove that she lost her income during the treatment period. In the absence of evidence, the Tribunal has not granted any amount towards loss of income, which is proper. The Tribunal has awarded total compensation of Rs.2,00,000/- to the appellant and therefore the amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

8. 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 available on record, it is seen that the appellant has contended that she was working as a Teacher and was earning a sum of Rs.17,000/- per month. The appellant has not let in any evidence to prove that she lost her income during the treatment period. Therefore, she is not entitled to any compensation towards loss of income. P.W.2/Doctor assessed that the appellant suffered 40% partial permanent disability and the Tribunal has granted a sum of Rs.70,000/- towards partial permanent disability, which is meagre. The accident occurred in the year 2007 and the appellant is entitled to a sum of Rs.2,000/- per percentage of disability and the compensation

awarded by the Tribunal towards partial permanent disability is enhanced to Rs.80,000/- [Rs.2,000/- X 40]. The appellant has taken treatment in the hospital as in-patient for 12 days from 17.06.2007 to 28.06.2007 and the Tribunal has not granted any amount towards attendant charges and loss of amenities. Hence, a sum of Rs.10,000/- each is granted by this Court towards attendant charges and loss of amenities. The Tribunal has granted a sum of Rs.2,000/- towards extra nourishment and Rs.16,000/- towards pain and sufferings, which are meager. Considering the nature of injuries, percentage of disability and treatment taken in the hospital by the appellant, the amounts granted by the Tribunal towards extra nourishment and pain and sufferings are hereby enhanced to Rs.10,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under other heads are 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.	Disability	70,000/-	80,000/-	Enhanced
2.	Pain and suffering	16,000/-	25,000/-	Enhanced
3.	Extra nourishment	2,000/-	10,000/-	Enhanced
4.	Medical expenses	1,09,500/-	1,09,500/-	Confirmed
5.	Transportation	2,000/-	2,000/-	Confirmed
6.	Attendant charges	-	10,000/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
8.	Damage to cloth	500/-	500/-	Confirmed
	Total	Rs.2,00,000/-	Rs.2,47,000/-	enhanced by Rs.47,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to Rs.2,47,000/- 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.994 of 2009 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any already withdrawn, by making necessary applications before the Tribunal. It is made clear that the appellant shall not be entitled to any interest for the delay period in filing the appeal on Rs.47,000/-, the amount now enhanced by this Court, as per the order of this Court dated 19.11.2019 made in C.M.P.No.20536 of 2019 in C.M.A.(SR)No.94004 of 2019. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

+lcc to Mr.C.Sangamithirai, Advocate Sr.101946
+lcc to Mr.Joseph Mathew, Advocate Sr.101119

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pvs[co]
srg 17/08/2020

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