

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4723 of 2019

Prema @ Jessy Prema

.. Appellant

Vs.

1.T.Kumar

2.New India Assurance Company Limited,
Motor Claims, No.45, Moore Street,
5th Floor, Parrys,
Chennai - 600 001.

.. Respondents

(R1 was set exparte in Trial Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.02.2019 made in M.C.O.P.No.2075 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.G.Suresh
for Ms.J.B.Solomon Peter Kamaldoss

For R2 : Ms.C.Sangamithirai

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 19.02.2019 made in M.C.O.P.No.2075 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

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.2075 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. She filed the above 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 13.01.2007.

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 lorry belonging to the first respondent and directed the second respondent, being the insurer of the lorry to pay a sum of Rs.11,87,000/- as compensation to the appellant/claimant.

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 the appellant has sustained amputation of the right leg above knee and multiple injuries all over her body. The appellant has sustained 80% permanent disability as assessed by Assistant Surgeon, Government Hospital, Thiruvallur. The appellant was doing tailoring and Saree business and was earning a sum of Rs.20,000/- per month and due to the accident, she lost her 100% earning capacity. The monthly income of the appellant fixed by the Tribunal at Rs.6,000/- is meager. The Tribunal has not granted any amount towards mental agony, loss of pleasures of life and loss of expectation of life. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

7.Per contra, Ms.C.Sangamithirai, learned counsel appearing for the second respondent-Insurance Company contended that the appellant has not produced any documents to show that she was earning a sum of Rs.20,000/- per month. In the absence of material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant and granted a sum of Rs.9,21,600/- towards loss of earning capacity by adopting multiplier method and the same is not meager. The Tribunal has awarded excess amount of Rs.1,00,000/- towards loss of amenities, Rs.75,000/- towards pain and sufferings and Rs.50,000/- towards attendant charges. In view of the excess amount granted by the Tribunal towards loss of amenities, pain and sufferings and attendant charges, the appellant is not entitled to any compensation towards mental agony, loss of pleasures of life and loss of expectation of life. The total compensation awarded by the Tribunal is extremely high and the appellant is not entitled to any enhancement 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 appellant has sustained 80% permanent disability as assessed by Assistant Surgeon, Government Hospital, Thiruvallur and her right leg above knee was amputated. According to appellant, she was doing tailoring and Saree business at the time of accident and was earning a sum of Rs.20,000/- per month. Due to the accident and nature of injuries sustained by the appellant, she would not be able to do the work as she was doing earlier. Except oral evidence, the appellant has not produced any documents to show that she was earning a sum of Rs.20,000/- per month. The Tribunal, in the absence of material evidence with regard to avocation and income of the appellant, fixed a sum of Rs.6,000/- per month as notional income of the appellant and granted a sum of Rs.9,21,600/- towards loss of earning capacity by adopting multiplier method. The accident occurred in the year 2007 and the monthly income fixed by the Tribunal is not meager and also the compensation granted by the Tribunal towards loss of earning capacity is just and reasonable. The appellant sustained 80% permanent disability. Considering the nature of injuries, period of treatment and disability suffered by the appellant, a sum of Rs.10,000/- granted by the Tribunal towards extra nourishment is meager and the same is enhanced to Rs.25,000/-. The Tribunal has granted a sum of Rs.11,87,000/- as total compensation to the appellant, which is not meager and hence, the appellant is not entitled to any compensation towards mental agony, loss of pleasures of life and loss of expectation of life. The amounts awarded by the Tribunal under other heads are just and reasonable and hence they 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.	Loss of earning capacity	9,21,600/-	9,21,600/-	Confirmed
2.	Transportation	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	10,000/-	25,000/-	Enhanced
4.	Medical expenses	25,000/-	25,000/-	Confirmed
5.	Pain and sufferings	75,000/-	75,000/-	Confirmed

6.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
7.	Attendant charges	50,000/-	50,000/-	Confirmed
	Total	Rs.11,86,600/- - rounded off to Rs.11,87,000/- -	Rs.12,01,600/- rounded off to Rs.12,02,000/-	enhanced by Rs.15,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,87,000/- is hereby enhanced to Rs.12,02,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent 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.2075 of 2014 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

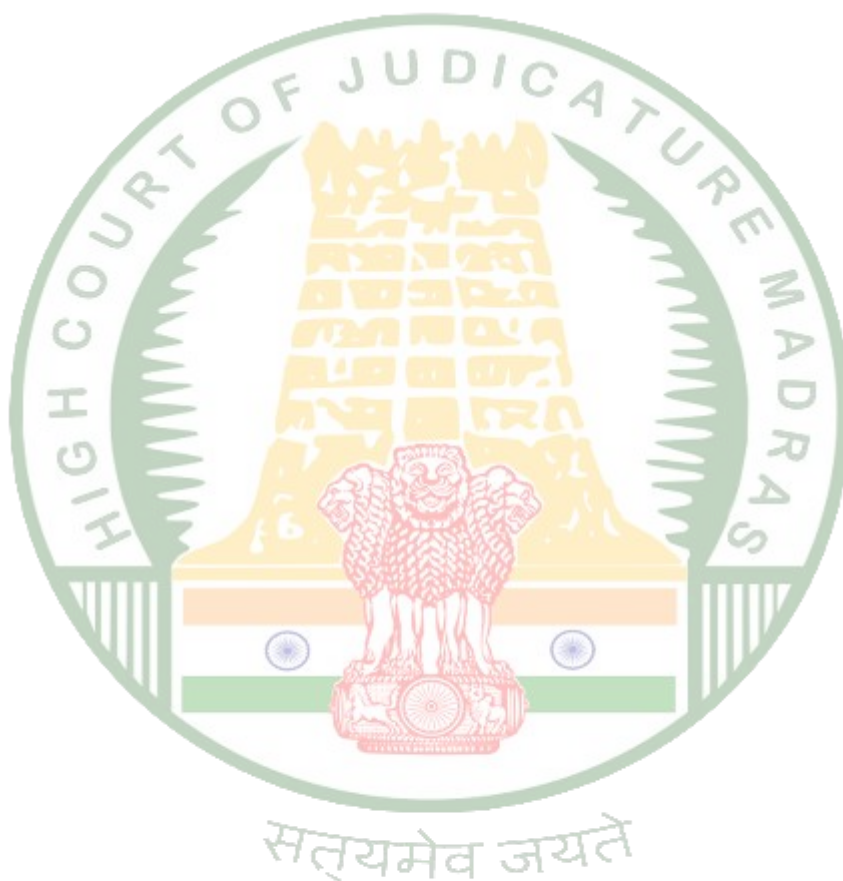
1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to M/s.J.B.Solomon, Peter Kamaldoss, Advocate SR.104571.

C.M.A.No.4723 of 2019

RP (CO)
CB (19/03/2020)



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