

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3306 of 2017

B.Pushpalatha

... Appellant/Petitioner

Vs.

1.S.Ibrahim

2.Iffco-Tokio Gen.Ins.Co. Ltd.

North Usman Road, T.Nagar,
Chennai - 17.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.2981 / 2011 on the file of Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai dated 7th day of September 2017. (07/09/2017)

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.C.R.Krishnamoorthy

R1 : Exparte

J U D G M E N T

The appellant/claimant filed M.C.O.P.No.2981 of 2011 on the file of the Motor Accident Claims Tribunal, VI Judge, Small Causes Court, Chennai claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her in a motor vehicle accident that took place on 15.06.2011.

2.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving of the driver of the auto-rickshaw belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.42,850/- with interest at the rate of 7.5% per annum from the date of petition, as compensation to the appellant/claimant.

3. Being dissatisfied with the quantum so awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

4. The learned counsel appearing for the appellant has contended that when PW2 - Doctor has assessed the percentage of disability suffered by the appellant / claimant at 25%, the Tribunal has erred in reducing the same to 3%. It is submitted that the appellant has suffered left ear lobe injury and for the same, plastic surgery was done which caused disfigurement in the face of the appellant. The learned counsel further submitted that due to the accident, the appellant sustained head injury and multiple injuries all over the body; that the appellant is also suffering from frequent headaches and giddiness; that the appellant is a tailor by profession and due to the injuries sustained by her, she would have lost her income for at least one month. However, the Tribunal has awarded only a sum of Rs.3,000/- towards loss of income for 15 days which is meagre. The compensation awarded by the Tribunal under other heads are also very meagre and hence, the same needs substantial enhancement, according to the learned counsel for the appellant / claimant.

5. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company has contended that the appellant was not admitted as in-patient in the hospital, but she was only treated as out-patient which is evident from the Discharge Summary. It is submitted that PW2 is a private practicing doctor who has not been authorised to issue Disability Certificate and hence, the Tribunal has rightly assessed the percentage of disability sustained by the appellant as 3% which is reasonable. Finally, the learned counsel submitted that the compensation awarded by the Tribunal is just and reasonable and hence the same does not call for any interference by this Court.

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

7. According to the learned counsel for the appellant, due to the accident, the appellant sustained head injury and multiple injuries all over the body. However, from the discharge summary, it is seen that the appellant has not been treated as in-patient. Hence, taking into consideration the age, avocation and nature of injuries sustained by the appellant, this Court deems it fit to fix the disability sustained by the appellant at 16%. Thus, by awarding a sum of Rs.1,500/- per percentage of disability, the compensation for

16% disability is determined at Rs.24,000/- (1500 x 16). Further, the Tribunal has not awarded any amount towards loss of amenities. Hence, a sum of Rs.10,000/- is awarded under this head. Further, the Tribunal has awarded Rs.350/- towards medical bills, Rs.10,000/- towards Transportation & Extra nourishment, Rs.3,000/- towards loss of income, Rs.20,000/- towards pain & suffering and Rs.500/- towards attender charges, which in the opinion of this Court, are just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced to Rs.67,850/-, the details of which are as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Pain and Suffering	20,000/-	20,000/-
2.	Transport & Extra nourishment	10,000/-	10,000/-
3.	Loss of income	3,000/-	3,000/-
4.	Disability	9,000/- (3 x 3000)	24,000/- (16 x 1500)
5.	Medical expenses	350/-	350/-
6.	Loss of Amenities	-	10,000/-
7.	Attender charges	500/-	500/-
	Total	42,850/-	67,850/-

Thus, the appellant is entitled to the modified compensation of Rs.67,850/- with interest at the rate of 7.5% per annum from the date of petition.

8. In the result, the appeal is partly allowed. No costs. The 2nd respondent-Insurance Company is directed to deposit the modified compensation, as ordered above, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rgr/km

To

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

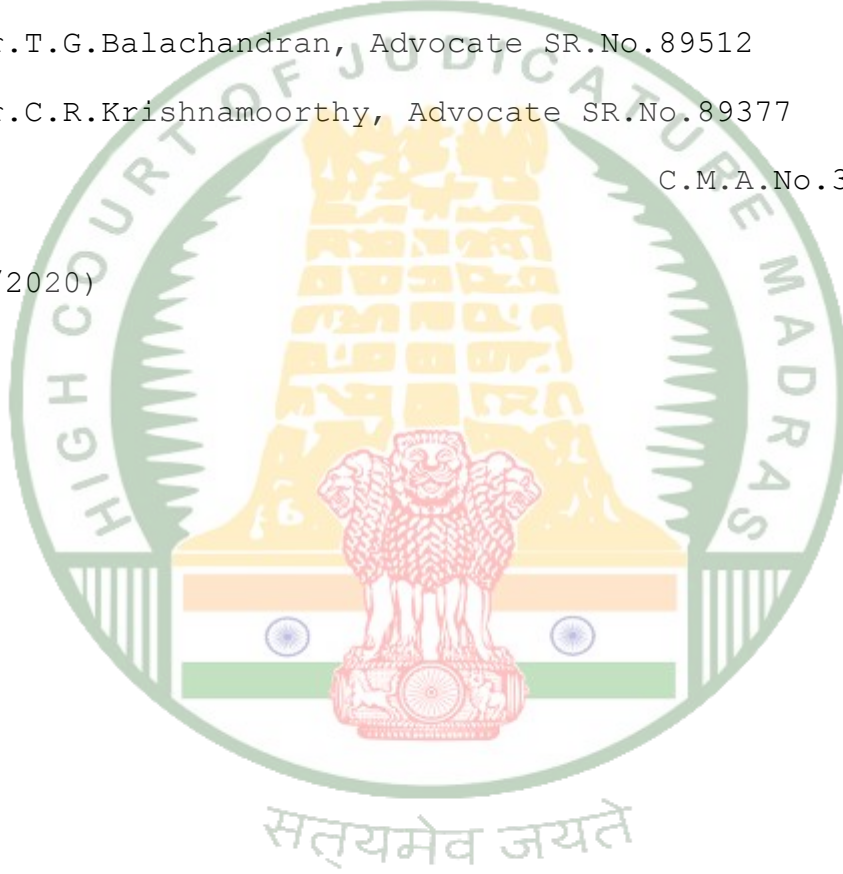
2.The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.T.G.Balachandran, Advocate SR.No.89512

+1cc to Mr.C.R.Krishnamoorthy, Advocate SR.No.89377

C.M.A.No.3306 of 2017

VG II(CO)
GMY(22/07/2020)



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