

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2454 of 2018

Valarmathy

.. Appellant/Petitioner

Vs.

1.Nithiyanandam

2.The National Insurance Company Ltd.
Pondicherry.

3.The Tamil Nadu State Transport Corporation,
Villupuram,
Villupuram District.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2018 made in M.C.O.P.No.83 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore.

For Appellant : Mr.M.Selvam

For R2 : Mr.J.Chandran

For R3 सत्यमेव जयते : Mr.K.J.Sivakumar

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 07.07.2018 made in M.C.O.P.No.83 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore.

2.The appellant is claimant in M.C.O.P.No.83 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Cuddalore. She filed the said claim petition

claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 05.05.2004. 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 lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.3,66,244/- as compensation to the appellant and dismissed the claim petition against the 3rd respondent/Transport Corporation. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant was doing milk vending business and an agriculturist and was earning a sum of Rs.5,000/- per month. In the accident, the left leg of the appellant was amputated. Without considering the same, the Tribunal erred in awarding only a meagre sum of Rs.3,66,244/- as compensation as against the claim made by the appellant. The Tribunal has not awarded any amount towards loss of amenities and prayed for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that in the absence of any material evidence, the Tribunal has fixed a sum of Rs.2,000/- as monthly income of the appellant and awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

5.Mr.K.J.Sivakumar, the learned counsel appearing for the 3rd respondent/Transport Corporation contended that the Tribunal has already dismissed the claim petition against the 3rd respondent/Transport Corporation and the 3rd respondent is not a necessary party in the appeal and prayed for dismissal of the appeal against the 3rd respondent.

6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and 3rd respondent/Transport Corporation and perused all the materials available on record.

7.From the materials available on record, it is seen that the appellant has contended that she was doing milk vending business and an agriculturist and was earning a sum of Rs.5,000/- per month. The appellant has failed to substantiate the said contention. In the absence of any material evidence, the Tribunal has fixed a sum of Rs.2,000/- as monthly income of the appellant. The accident is of the year 2004 and the monthly

income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.4,000/- as monthly income of the appellant. P.W.2/Doctor assessed the disability of the appellant at 85%. The Tribunal reduced the same to 75% and adopted multiplier method for awarding compensation towards future loss of earning power. The appellant is entitled to compensation for 85% disability. The appellant was aged 35 years at the time of accident. The Tribunal applied multiplier 17. The amount awarded by the Tribunal towards future loss of earning power is modified to Rs.6,93,600/- (Rs.4,000/- x 12 x 17 x 85/100). The amounts awarded by the Tribunal towards pain & suffering, extra nourishment and attendant charges are meagre and the same are enhanced to Rs.35,000/-, Rs.10,000/- and Rs.20,000/- respectively. The left leg of the appellant was amputated and she would have incurred expenses for fixing artificial leg. A sum of Rs.1,50,000/- is granted for fixing artificial leg. The Tribunal has not awarded any amount towards loss of amenities and this Court awards a sum of Rs.25,000/- towards loss of amenities. The amounts awarded by the Tribunal towards medical expenses and loss of income 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.	Pain & suffering	25,000	35,000	Enhanced
2.	Extra nourishment	5,000	10,000	Enhanced
3.	Attendant charges	10,000	20,000	Enhanced
4.	Medical expenses	8,244	8,244	Confirmed
5.	Loss of income	12,000	12,000	Confirmed
6.	Future loss of earning power	3,06,000	6,93,600	Enhanced
7.	Loss of amenities	-	25,000	Granted
8.	Artificial leg	-	1,50,000	Granted

	Total	Rs.3,66,244/-	Rs.9,53,844/-	Enhanced by Rs.5,87,600/-
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8.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,66,244/- is hereby enhanced to Rs.9,53,844/- 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 entire 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. 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 by filing necessary applications before the Tribunal. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Cuddalore.

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

+1 CC to Mr.M.Selvam, Advocate sr 41456.

+1 CC to Mr.J.Chandran, Advocate sr 41071.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 41128.

C.M.A.No.2454 of 2018

CP(CO)

SP(05/08/2019)