

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.589 OF 2020

R.Meena @ Philomina

.. Appellant/
Petitioner

Vs.

1. Shree Motilal Kanhaiyalal Forma
Institute of Technology,
Thaiyur Village,
Old Mahabalipuram,
Kelambakkam - 603 001.
2. HDFC Ergo Insurance Company Limited,
Rehaja Tower, Ground Floor,
No.177, Anna Salai,
Chennai - 600 002.

.. Respondents/
Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2019 made in M.C.O.P.No.7170 of 2014 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.Amar D.Pandiya

For R2 : Ms.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 12.04.2019 made in M.C.O.P.No.7170 of 2014 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.By consent of both the learned counsel for the appellant and 2nd respondent, the appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is claimant in M.C.O.P.No.7170 of 2014 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. She filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 01.10.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the private bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said private bus to pay a sum of Rs.3,45,300/- as compensation to the appellant.

5.Not being satisfied with the quantum of compensation 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 was aged 28 years at the time of accident and was earning a sum of Rs.700/- per day by working as a tailor. The appellant has examined P.W.2-Doctor to prove the disability and injuries suffered by her. The Tribunal reduced the percentage of disability to from 60% to 10% and granted meagre amount as compensation for disability. Due to the injuries, she could not continue her work as she was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning capacity. The amount awarded by the Tribunal towards pain & sufferings, transportation charges, extra nourishment, disability, attendant charges and loss of income are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that P.W.2/Doctor, who was a private practicing doctor, has not been authorized to issue disability certificate as per "The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995" and its Rules 1996. PW2/Doctor has not filed any worksheet and guidelines and the disability assessed by the doctor is not for the whole body. It is further contended that PW2/Doctor has not produced radiologist report for the X-ray taken at the time of assessment of the disability. Therefore, 60% disability assessed by PW2/Doctor is excessive. The percentage of disability fixed by the Tribunal is correct. The Tribunal after considering the materials available on record, has 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.

8. 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.

9. It is the contention of the appellant that she suffered fracture in the left knee and multiple injuries all over the body. She examined PW2/Doctor to prove the same, who deposed that the appellant has suffered 60% disability. From the material on record, it is seen that PW2/Doctor is not a authorized Doctor to issue disability certificate. As per "The Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995" and its Rules 1996. Further, PW2/Doctor has not filed any worksheet and guidelines and the disability assessed by the doctor is not for the whole body. The Tribunal considering the same reduced the percentage of disability to 10%. Considering the nature of injuries sustained by the appellant, disability fixed by the Tribunal is modified and fixed as 30%. The accident is of the year 2014. The appellant is entitled to compensation for 30% of disability. A sum of Rs.90,000/- (30% x Rs.3,000/-) is awarded towards disability by awarding a sum of Rs.3,000/- per percentage of disability. The appellant has not proved that she suffered functional disability and hence she is not entitled to compensation by adopting multiplier method.

10. According to the appellant, she was aged 28 years at the time of accident and was earning a sum of Rs.700/- per day by doing tailoring work. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.19,500/- towards loss of income for a period of three months, which is not proper. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.9,000/- per month is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, she would not have worked atleast for a period of six months. Hence. a sum of Rs.54,000/- (Rs.9,000/- X 6) is awarded towards loss of income for a period of six months. The appellant has taken treatment as in-patient in Balaji Medical College Hosptial from 01.10.2014 to 15.10.2014 and subsequently, she has taken treatment as in-patient in Sarathy Nursing Home from 18.10.2014 to 17.11.2014. The amounts awarded by the Tribunal altogether towards transport & extra nourishment, pain & sufferings, attendant charges and damages to clothes are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards transport expenses, extra nourishment, pain & sufferings, attendant charges and damages to clothes are enhanced to Rs.10,000/-, Rs.25,000/-, Rs.40,000/-, Rs.25,000/-

and Rs.2,000/- respectively. The amounts awarded by the Tribunal towards loss of amenities and medical expenses are just and reasonable and hence 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 or reduced
1.	Pain and sufferings	20,000	40,000	Enhanced
2.	Transportation and extra nourishment	10,000	10,000 25,000	Enhanced
3.	Disability	30,000	90,000	Enhanced
4.	Attender charges	13,500	25,000	Enhanced
5.	Loss of income	19,500	54,000	Enhanced
6.	Loss of amenities	10,000	10,000	Confirmed
7.	Medical expenses	2,41,298	2,41,298	Confirmed
8.	Damages to clothes	1,000	2,000	Enhanced
	Total	Rs.3,45,298/- is rounded off to Rs.3,45,300/-	Rs.4,97,298/- is rounded off to Rs.4,97,300/-	Enhanced by Rs.1,52,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,45,300/- is hereby enhanced to Rs.4,97,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant 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. 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. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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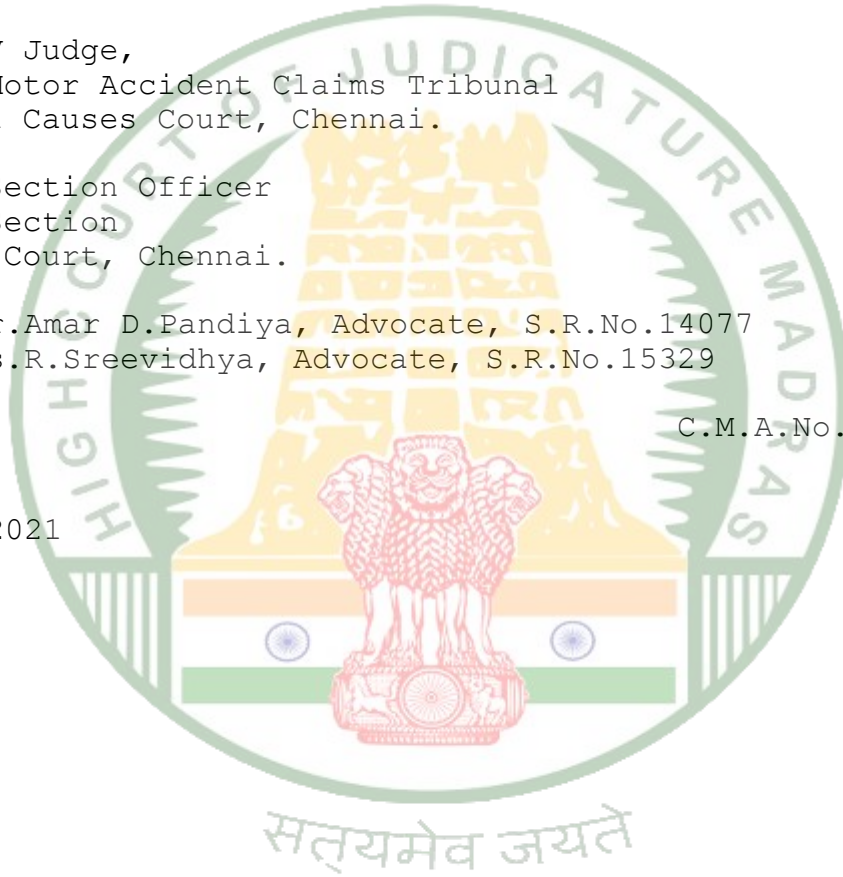
1. The V Judge,
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.
2. The Section Officer
V.R.Section
High Court, Chennai.

+1cc to Mr.Amar D.Pandiya, Advocate, S.R.No.14077

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.15329

C.M.A.No.589 of 2020

AD(CO)
CS/17/06/2021



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