

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3210 of 2010

Kalaivani

.. Appellant/Claimant

Vs.

1.Senthil Kumar

2.M/s.Chitra Travels,
No.3/320, Gandhipuram,
Gandhi Nagar Post,
Udumalpet Taluk.

3.M/s.United India Insurance Limited,
No.144-B, Kalpana Road,
Udumalpet.

4.C.Chinna Iyyappan

5.Selvaraj

6.IFCO-TOKIO General Insurance,
'Thulasi Chambers',
3rd Floor, 195, T.V.Samy Road, (West),
R.S.Puram,
Coimbatore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2009 made in M.C.O.P.No.46 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

For Appellant : Mr.M.Prakash
for Mr.J.Pothiraj

For RR 2, 4 & 5: No appearance

For R3 : Ms.I.Malar

For R6 : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.09.2009 made in M.C.O.P.No.46 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

2.The appellant is the claimant in M.C.O.P.No.46 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. She filed the above 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 17.07.2006.

3.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 2nd respondent and directed the respondents 1 to 3 to pay a sum of Rs.5,12,100/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the respondents 4 to 6.

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

5.The learned counsel appearing for the appellant contended that due to the injuries sustained by the appellant in the accident, the appellant has lost her sensation below her hip and she became immobilized and she could not move without assistance of others. Before the accident, the appellant was working as an Agricultural Labour Contractor and was earning a sum of Rs.10,000/- per month. Due to the injuries and disability sustained by her in the accident, she has lost her entire earning capacity. The Tribunal having held that appellant suffered 100% loss of earning capacity, erred in awarding lumpsum amount of Rs.1,50,000/- towards loss of earning capacity instead of awarding compensation by fixing monthly income and adopting multiplier method. The Tribunal ought to have awarded a sum of Rs.1,00,000/- towards loss of amenities, Rs.1,50,000/- towards pain and sufferings and Rs.50,000/- towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Ms.I.Malar, learned counsel appearing for the 3rd respondent-United India Insurance Company contended that the Tribunal has considered the evidence of P.W.2/Doctor with regard

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to nature of injuries, treatment taken and disability and awarded a sum of Rs.1,50,000/- for loss of earning capacity, which is just compensation. The amounts awarded by the Tribunal under other heads are not meagre and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 6th respondent made his submissions supporting the award passed by the Tribunal 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 3rd respondent-United India Insurance Company and the learned counsel appearing for the 6th respondent-IFCO-TOKIO General Insurance and perused the entire materials on record.

9.From the award passed by the Tribunal, it is seen that in the accident, the appellant has lost her sensation below her hip and she became immobilized and she could not move without assistance of others. Further, it is the contention of the appellant that before the accident, she was working as an Agricultural Labour Contractor and was earning a sum of Rs.10,000/- per month. But she has failed to prove the said contention. The respondents have not let in any evidence disprove the claim of the appellant that she was working as an Agricultural Labour Contractor. The accident occurred in the year 2006 and it will be just and proper to fix a sum of Rs.3,000/- per month as notional income of the appellant. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by her. P.W.2/Doctor has deposed in detail about the nature of injuries and disability suffered by the appellant. The appellant has produced Exs.P7 to P12 to prove the nature of injuries, treatment taken and disability suffered by her. The respondents have not let in any contra evidence to disprove the evidence of P.W.2/Doctor. The Tribunal considering the documents filed, evidence of P.W.2/Doctor accepted the claim that the appellant suffered 100% loss of earning capacity. The Tribunal having held so, erred in awarding lumpsum amount of Rs.1,50,000/- towards loss of earning capacity and the same is erroneous. Considering the nature of injuries, disability and claim of the appellant that she was an Agricultural Labour Contractor and lost her 100% earning capacity, she is entitled to compensation for loss of earning capacity by adopting multiplier method. The appellant was aged 25 years at the time of accident and the multiplier applicable is '18' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another]. Therefore, the appellant is entitled to

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a sum of Rs.6,48,000/-[Rs.3,000/- X 12 X 18] towards loss of earning capacity.

10.From the award passed by the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient from 17.07.2006 to 05.08.2006. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards pain and sufferings is enhanced to Rs.50,000/-. Considering the nature of injuries and evidence of P.W.2/Doctor, the appellant would incur some amount for her future medical treatment. Therefore, a sum of Rs.25,000/- is awarded towards future medical expenses. The amounts awarded by the Tribunal towards medical expenses and loss of amenities are just and reasonable and hence, the same are hereby confirmed.

11.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed, enhanced or granted
1.	Loss of earning capacity	1,50,000/-	6,48,000/-	Enhanced
2.	Pain and sufferings	25,000/-	50,000/-	Enhanced
3.	Loss of amenities	1,25,000/-	1,25,000/-	Confirmed
4.	Medical expenses	2,12,077/-	2,12,077/-	Confirmed
5.	Future medical expenses	-	25,000/-	Granted
	Total	Rs.5,12,077/- rounded off to Rs.5,12,100/-	Rs.10,60,077/- rounded off to Rs.10,60,100/-	Enhanced by Rs.5,48,000/-

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,12,100/- is hereby enhanced to Rs.10,60,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 to 3 are 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.46 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Motor Accident Claims Tribunal,
The Subordinate Judge,
Udumalpet.

Copy to:

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

+1cc to Mr.T.Ravichandran, Advocate SR.23328

+1cc to Mr.M.B.Gopalan, Advocate SR.23781

+1cc to Mr.J.Pothiraj, Advocate SR.23265

RSV(CO)
CB(21/01/2021)

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