

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1374 of 2013

Saroja

.. Appellant

Vs.

1.Saranraj

2.Gnanavadivelu

3.The Branch Manager,
United India Insurance Co. Ltd.,
No.2, Church Street,
Karaikal Town & Munsif.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.11.2012, made in M.C.O.P. No.78 of 2012, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal.

For Appellant : Mr. K. Prasanna
for M/s. Bharatha Chakaravarthy

For Respondents: Mr. C. Jayabala (For R1 & R2)
Mr. D. Bhaskaran (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 23.11.2012, made in M.C.O.P. No.78 of 2012, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal.

2.The appellant-claimant filed M.C.O.P. No.78 of 2012, on the file of the District Court, (Motor Accident Claims Tribunal) Karaikal, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.02.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver of the Tractor belonging to the 2nd respondent and directed the 3rd respondent as insurer of the offending vehicle to pay a sum of Rs.1,08,535/- as compensation to the appellant at the first instance and recover the same from the 2nd respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.11.2012, made in M.C.O.P. No.78 of 2012, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered grievous injuries, fracture and dislocation at left lower limb ankle. She has taken first-aid treatment at Government General Hospital, Karaikal and thereafter treated as in-patient at K.S. Hospital, Karaikal from 16.02.2012 to 26.02.2012. The appellant examined P.W.2 Doctor, certified that the appellant suffered 35% disability. P.W.2 Doctor deposed about the nature of injuries and disability suffered by the appellant. The Tribunal erroneously reduced the percentage of disability to 30% on the ground that the assessment of P.W.2 Doctor is not in conformity with the guidelines. At the time of accident, the appellant was working as a Tailor and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed only a meagre sum of Rs.3,000/- per month as notional income of the appellant and awarded compensation towards loss of income. The amounts awarded by the Tribunal for extra nourishment and pain and suffering are meagre and prayed for enhancement of the compensation.

6.The learned counsel appearing for the respondents 1 and 2 contended that in the absence of any material evidence produced by the appellant to prove her avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2 Doctor who deposed that 35% of disability suffered by the appellant would be reduced to 30% on taking physiotherapy treatment and considering the fact that the assessment of P.W.2 Doctor is not as per the guidelines issued by the Central Government, rightly reduced the percentage of disability to 30% and awarded compensation. The total compensation awarded by the Tribunal is not meagre. Hence, the

appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

8. Heard learned counsel appearing for the appellant, respondents 1 and 2 as well as the 3rd respondent and perused the materials available on record.

9. From the materials on record, it is seen that it is the contention of the learned counsel appearing for the appellant that in the accident, the appellant sustained grievous injuries and dislocation at left lower limb ankle. To prove the nature of injuries and disability, the appellant examined herself as P.W.1 and examined P.W.2 Doctor. P.W.2 Doctor examined the appellant and certified that the appellant suffered 35% disability and issued Ex.P10 - disability certificate to that effect. The Tribunal reduced the percentage of disability to 30% on the ground that the assessment of disability by P.W.2 Doctor is not based on any guidelines issued by the Central Government. The said reasoning is erroneous. The respondents have not let in any contra evidence to disprove the evidence of PW2 Doctor and Ex.P10 - disability certificate. Considering the nature of injuries and disability, the appellant is entitled to compensation for 35% disability. Hence, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,05,000/- [35% x Rs.3,000/-], at the rate of Rs.3,000/- per percentage. The appellant claimed that she was a Tailor at the time of accident and was earning a sum of Rs.6,000/- per month. She failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.3,000/- per month as notional income of the appellant and granted a sum of Rs.3,000/- towards loss of income for one month. The accident is of the year 2012. The notional income fixed by the Tribunal is meagre. A sum of Rs.7,500/- per month is fixed as notional income of the appellant. Due to the injuries sustained in the accident, she would not have worked at least for a period of 2 months. Hence, the amount granted by the Tribunal for loss of income is enhanced to Rs.15,000/- [Rs.7,500/- x 2 months], at the rate of Rs.7,500/- per month for two months. The same is in order. For the injuries suffered in the accident, the appellant has taken treatment as inpatient at K.S. Hospital, Karaikal from 16.02.2012 to 26.02.2012. The Tribunal failed to award any amount towards attendant charges. Considering the nature of injuries and period of treatment, a sum of Rs.7,500/- is awarded towards attendant charges. The Tribunal has not awarded any amount towards damages to clothes and the appellant is entitled to a sum of Rs.2,000/- towards damages to clothes. The amount awarded by the Tribunal towards extra nourishment is meagre. Considering the nature of injuries, the same is enhanced to

Rs.10,000/-. The amounts awarded by the Tribunal under other heads 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
1.	Partial Disability	30,000/-	1,05,000/-	Enhanced
2.	Extra nourishment	5,000/-	10,000/-	Enhanced
3.	Medical expenses	45,535/-	45,535/-	Confirmed
4.	Loss of income	3,000/-	15,000/-	Enhanced
5.	Attendant charges	-	7,500/-	Granted
6.	Damages to clothes	-	2,000/-	Granted
7.	Pain and suffering	25,000/-	25,000/-	Confirmed
	Total	1,08,535/-	2,10,035/-	Enhanced by Rs.1,01,500/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,08,535/- is enhanced to Rs.2,10,035/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.78 of 2012 at the first instance and recover the same from the 2nd respondent. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa

To

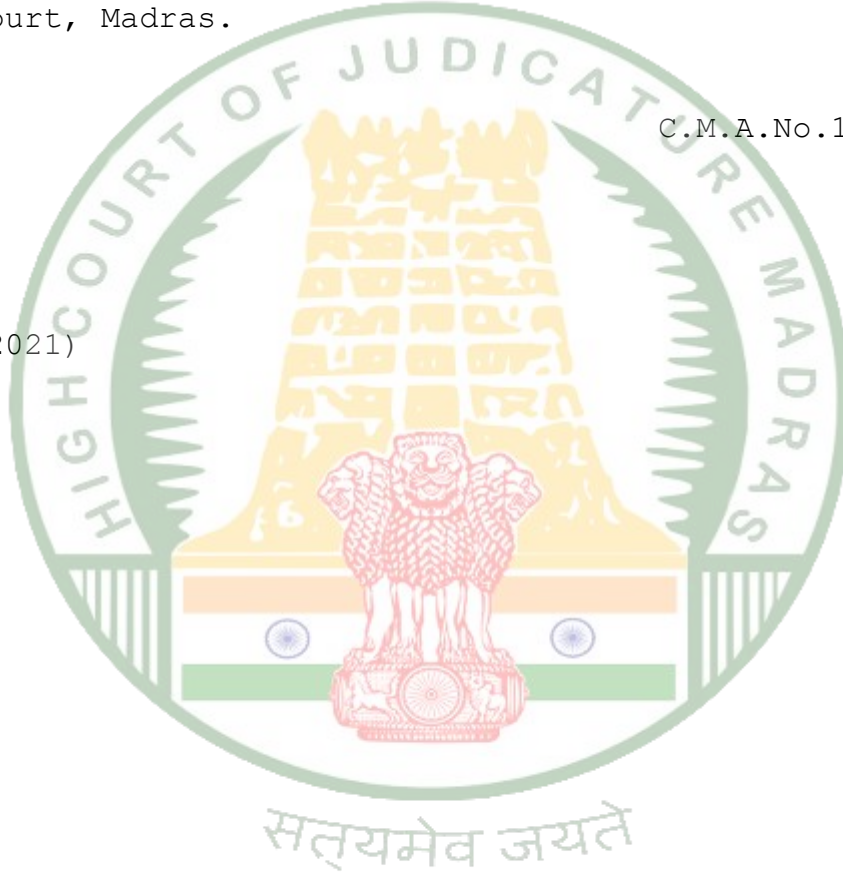
1.The District Judge,
(Motor Accident Claims Tribunal),
Karaikal.

Copy To

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

C.M.A.No.1374 of 2013

VSN II (CO)
GN(06/05/2021)



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