

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.09.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1332 of 2015

Seetha @ Seethammal

..Appellant/Petitioner

/versus/

1.N.Venkatesan

2.Shriram General Insurance Company Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai-17.

..Respondent/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award of Motor Accident Claims Tribunal(II Judge, Small Causes Court, Chennai) and made in M.A.C.T.O.P.No.3624/2012 dated 22.01.2015.

For Appellant :Ms.Saleem Fathima for
M/s S.Ravikumar

For Respondent :Mr.K.Poomalai for R2

JUDGMENT

(This case has been heard through Video Conference)

This appeal is filed for enhancement of compensation, being not satisfied with the quantum of compensation awarded by the Tribunal.

2.It is the case wherein on 12.06.2012, while the claimant was going to purchase fruits from the wholesale market, the driver of the Tata Ace Van bearing Reg.No.TN 22 AX 2457 rash and negligently dashed against the claimant/appellant and caused bodily injury. In the said accident, she sustained fracture over left femur, fracture pelvis, dislocation over hip besides lacerated injury all over the body. She was admitted in the Government Hospital and later shifted to Parvathy Hospital. She has taken treatment as inpatient from 12.06.2012 to 14.07.2012. For the treatment of the injury sustained she incurred medical expenses for Rs.4,35,000/-. Contending that the injury sustained by the claimant is a partial permanent disability and

for loss of income, a claim petition for Rs.20,00,000/- was filed. The Insurance Company has filed a counter contesting the claim is excessive and also not maintainable against the insurance company since the claimant has contributed to the accident. The Tribunal on considering the evidence placed before it has awarded a sum of Rs.8,66,000/- as compensation.

3.In this appeal, the claimant seeks for enhancement of compensation on the ground that she was admitted in the hospital and treated as in-patient for 30 days and three surgeries were conducted for which she has spent about Rs.4,35,000/-. The injury has caused 100% functional disability. Being a fruit and flower vendor the disability has taken away her earning capacity totally. The Tribunal ought to have taken note of the functional disability as 100% instead of 50%. Further, in the appeal, it is contended that the award of compensation for pain and suffering, loss of income during the treatment period has been assessed very less and no compensation is awarded for loss of amenity.

4.The learned counsel appearing for the Insurance Company would submit that the Tribunal has fixed the income of the claimant as Rs.6000/- per month. Though there was no evidence/document to show that she had that much of earning capacity at the age of 60 years. Besides, the disability was only partial permanent disability, which does not warrant application of multiplicand. However, the Tribunal has applied multiplier and has assessed the functional disability as 50% though the fracture was only on the right femur and pelvis bone. Further, the learned counsel appearing for the Insurance Company would submit that having applied the multiplier, the claimant need not be paid any compensation under loss of amenity.

5.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent.

6.A perusal of the award shows that the claimant to substantiate her claim has relied upon seven documents. Out of which, Ex.P1 is the First Information Report; Ex.P2 is the Rough sketch of the accident site; Ex.P3 is the Accident register and Ex.P4 is the Discharge summary. Dr.N.Saichandran [PW-2], who has not treated the claimant, has given Disability Certificate Ex.P7. Apart from seven exhibits, there is no other evidence to support the appeal for enhancement.

7.The Tribunal on proper appreciation of evidence has rightly assessed the loss on various heads and awarded Rs.8,66,000/- with the following break up details:-

Sl. No.	Particulars	Amount awarded by the Tribunal (Rs.)
1.	Loss of income for 6 months	36,000-00
2.	Transportation	15,000-00
3.	Extra nourishment	15,000-00
4.	Damages to clothes	1,000-00
5.	Medical expenses	4,35,000-00
6.	Attender charges	15,000-00
7.	Pain and suffering	25,000-00
8.	Disability in loss of earning power	3,24,000-00
	Total	8,66,000-00

This Court finds that the award passed by the Tribunal is just and fair and requires no interference. Hence, this appeal is liable to be dismissed.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To:

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

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.Poomalai, Advocate sr 30944.

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KK(CO)
SP(21/04/2021)