

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.163 of 2011

S.Nirmala Devi

.. Appellant/Petitioner

Vs.

1.K.Muralidhar

2.The New India Assurance Company Limited,
No.46, Moore Street,
Chennai - 600 001.

... Respondents/Respondents

(R2 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.10.2010 made in M.C.O.P.No.3950 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

for Mr.V.Mohan Choudary

For R2 : Mr.J.Chandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.10.2010 made in M.C.O.P.No.3950 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3950 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 20.05.2005.

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 van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the van to pay a sum of Rs.1,23,000/- as compensation to the appellant.

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 in the accident the appellant sustained right elbow fracture and crush injuries all over her body. P.W.2/Doctor examined the appellant and certified that she suffered 35% disability and issued Ex.P11/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 30% and awarded compensation only for 30% of disability. The appellant was working as Tailor and was earning a sum of Rs.200/- per day and due to the injuries sustained by her in the accident, she could not do her work as she was doing earlier. The Tribunal ought to have awarded a sum of Rs.3,00,000/- towards loss of earning capacity. The appellant has taken treatment in the hospital as in-patient for 20 days in two spells from 20.05.2005 to 06.06.2005 and from 03.05.2006 to 04.05.2006 and underwent surgery on 03.05.2006. The amounts awarded by the Tribunal towards loss of income, attendant charges, extra nourishment, pain and sufferings are meagre. The interest granted by the Tribunal at 7.5% per annum is meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal after considering the evidence of P.W.2/Doctor, has awarded compensation for 30% disability. The appellant has not produced any material evidence to prove the avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.3,000/- per month as notional income of the appellant and awarded compensation towards loss of income for three months, which is not meagre. The appellant has not proved that she lost her earning capacity and hence, she is not entitled to any amounts towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent- Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that in the accident the appellant sustained fracture of right elbow multiple fracture and crush injuries, lacerations and abrasions all over the body. To prove the same, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 35% disability and issued Ex.P11/disability certificate to that effect. The respondents did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P11/disability certificate. The Tribunal having held that assessment of disability by P.W.2/Doctor is reasonable, erroneously reduced the percentage of disability to 30%, which is not correct. Therefore, the appellant is entitled to compensation for 35% disability. The Tribunal has awarded a sum of Rs.2,000/- per percentage of disability, which is proper. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.70,000/- [Rs.2,000/- X 35% of disability].

9. It is the contention of the appellant that she was aged 28 years and was working as Tailor and was earning a sum of Rs.200/- per day. But she failed to prove the said contention. In the absence of any 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 awarded compensation towards loss of income for three months. The accident occurred in the year 2005 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.4,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability, she would not have attended her work at least for a period of nine months. Thus, the amount awarded by the Tribunal towards loss of income is modified to Rs.36,000/- [Rs.4,000/- X 9 months]. The appellant has not proved that due to the disability and injuries sustained by her in the accident, she lost her earning capacity. Hence, she is not entitled to any amounts towards loss of earning capacity. The appellant has taken treatment as in-patient at Stanley Hospital from 20.05.2005 to 06.06.2005 and also at Vijay Hospital from 03.05.2006 to 04.05.2006 totally 20 days and underwent surgery on 03.05.2006. The Tribunal has not awarded any amount towards attendant charges. Therefore, the appellant is entitled to a sum of Rs.6,000/- (Rs.300/- X 20 days) towards attendant charges at the rate of Rs.300/- per day. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and transportation are hereby enhanced to Rs.10,000/- and Rs.5,000/- respectively. The Tribunal has not awarded any amount towards

loss of amenities and damages to clothes. Therefore, the appellant is entitled to a sum of Rs.10,000/- towards loss of amenities and Rs.1,000/- towards damages to clothes respectively. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are just and reasonable and hence, the same are hereby confirmed. The interest awarded by the Tribunal at 7.5% per annum is not meagre and the same is 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.	Loss of income	9,000/-	36,000/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Disability	60,000/-	70,000/-	Enhanced
4.	Extra nourishment	3,000/-	10,000/-	Enhanced
5.	Transportation	2,000/-	5,000/-	Enhanced
6.	Medical expenses	29,000/-	29,000/-	Confirmed
7.	Attendant charges	-	6,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.1,23,000/-	Rs.1,87,000/-	enhanced by Rs.64,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,23,000/- is hereby enhanced to Rs.1,87,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. 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, to the credit of M.C.O.P.No.3950 of 2005 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk
To

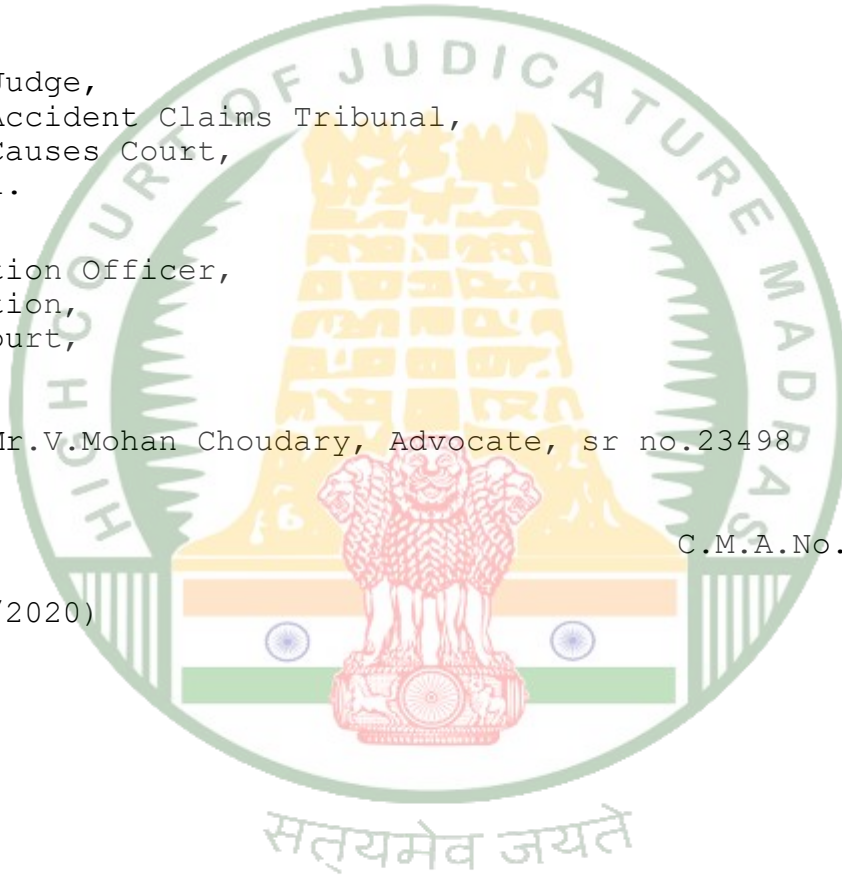
1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

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

+2ccs to Mr.V.Mohan Choudary, Advocate, sr no.23498

C.M.A.No.163 of 2011

SVI (CO)
RMP (19/12/2020)



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