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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1645 of 2013

Sivagami

... Appellant/Petitioner

Vs.

1.Prabhu

2.Duraisamy

3.The Oriental Insurance Company Limited,
RVR Building, 1st Floor,
No.54, First Floor, Dhali Road,
Udumalpet.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.03.2012 made in M.C.O.P.No.253 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R1 : No appearance

For R2 : Died (T/E)

For R3 : Mr.S.Arunkumar

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 22.03.2012 made in M.C.O.P.No.253 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur.

3.The appellant is the claimant in M.C.O.P.No.253 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur. She filed the above said claim petition,



4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the 2nd respondent's van to pay a sum of Rs.1,04,200/- as compensation to the appellant at the first instance and recover the same from the 2nd respondent-owner of the van.

6. The learned counsel appearing for the appellant contended that the appellant suffered multiple grievous injuries, dislocation of elbow in the left hand and she cannot stand for a long time. Considering the nature of injuries, the Tribunal ought to have adopted multiplier method for awarding compensation towards disability instead of awarding compensation by percentage method. The Tribunal has not awarded any amount towards pain and sufferings. The appellant was doing Agricultural works and doing Milk vending business and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.4,000/- per month as notional income of the appellant and granted only meagre amount towards loss of income. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and prayed for enhancement of compensation.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

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contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,000/- per month as notional income of the appellant. The accident occurred in the year 2009 and the notional income fixed by the Tribunal is meagre. A sum of Rs.6,000/- per month is fixed as notional income of the appellant. The Tribunal has awarded compensation for loss of income for three months. Due to the injuries sustained by her in the accident, the appellant would not have attended her work atleast for a period of five months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.30,000/- (Rs.6,000/- X 5 months).

10. According to the appellant, she suffered multiple grievous injuries, dislocation of elbow in the left hand and she cannot stand for a long time. To prove the injuries and dislocation, the appellant examined herself as P.W.1 and Doctor as P.W.2. P.W.2/Doctor examined the appellant and certified that appellant suffered 32.4% disability and issued Ex.P18/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P18/disability certificate, granted a sum of Rs.64,000/- towards disability at the rate of Rs.2,000/- per percentage of disability for 32% of disability. The accident occurred in the year 2009 and the appellant is entitled to a sum of Rs.3,000/- per percentage of disability. The appellant has not proved that she suffered functional disability and lost her earning capacity. Therefore, the appellant is not entitled to compensation towards disability by adopting multiplier method. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.96,000/- (Rs.3,000/- X 32% of disability). The appellant has taken treatment in the hospital as in-patient for 13 days and she has filed discharge summary. The Tribunal has not awarded any amount towards pain and sufferings, attendant charges, damages to clothes and loss of amenities. The appellant is entitled to a sum of Rs.20,000/-, Rs.10,000/-, Rs.1,000/- and Rs.10,000/- towards pain and sufferings, attendant charges, damages to clothes and loss of amenities respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are enhanced to Rs.5,000/- and Rs.7,500/- respectively. Though the appellant has produced medical bills for a tune of Rs.1,140/-, considering the nature of injuries and disability, the appellant would have spent more amount towards medical expenses. Thus, the appellant is entitled to a sum of Rs.7,500/- towards medical expenses. The Tribunal has awarded a sum of Rs.20,000/- towards mental agony for which the appellant is not entitled to and hence the same is set aside. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	64,000/-	96,000/-	Enhanced
2.	Loss of income	12,000/-	30,000/-	Enhanced
3.	Extra nourishment	5,000/-	7,500/-	Enhanced
4.	Transportation	2,000/-	5,000/-	Enhanced
5.	Medical expenses	1,140/-	7,500/-	Enhanced
6.	Mental agony	20,000/-	-	Set aside
7.	Damages to clothes	-	1,000/-	Granted
8.	Pain and sufferings	-	20,000/-	Granted
9.	Attendant charges	-	10,000/-	Granted
10.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.1,04,140/- rounded off to Rs.1,04,200/-	Rs.1,87,000/-	enhanced by Rs.82,800/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,04,200/- 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 3rd 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.253 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Tiruppur, at the first instance



and recover the same from the 2nd respondent-owner of the van. 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.36108
+1cc to Mr.S.Arunkumar, Advocate Sr.36225

C.M.A.No.1645 of 2013

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srg 28/07/2021