

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1926 of 2015

Jayapradha

.. Appellant/Petitioner

Vs.

1.Anjana Venkat

2.The Divisional Manager,
National Insurance Co. Ltd.,
No.169, Anna Salai, Chennai,
Office at J.N.Street,
Puducherry.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.08.2014 made in M.C.O.P.No.395 of 2011 on the file of the Motor Accident Claims Tribunal cum Additional Judge, Tindivanam.

For Appellant :M/s.D.Rathika for Mr. G.Mohammed Aseef

For R2 : Mrs.R.Sree Vidhya

For R1 : Not Such Person Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 20.08.2014 in M.C.O.P.No.395 of 2011, on the file of the Motor Accident Claims Tribunal cum Additional Judge, Tindivanam.

2.The appellant is the claimant in M.C.O.P.No.395 of 2011 on the file of the Motor Accident Claims Tribunal cum Additional Judge, Tindivanam. She filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 25.10.2003.

3.The Tribunal, considering the pleadings, oral and documentary evidence, has held that the accident occurred due to

the rash and negligent driving by the driver of the Car belonging to the first respondent and directed 2nd respondent-Insurance Company, being the insurer of the said car, to pay a sum of Rs.2,15,000/- as compensation to the appellant/claimant, at the first instance and recover the same from the 1st respondent/owner of the car.

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/claimant contended that the appellant suffered permanent disability and the Tribunal ought to have adopted the multiplier method while awarding compensation towards disability. The Tribunal has not awarded any amount towards the loss of amenities. The amount awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mrs. Sree Vidhya, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that she suffered functional disability and hence the appellant is not entitled to compensation by adopting multiplier method. 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/claimant as well as the second respondent-Insurance Company and perused the materials available on record.

8. It is the contention of the appellant/claimant that she sustained fracture on her head and bleeding on both ears and nose and sustained injuries on her left hand, leg, chest and right shoulder. P.W.3/Doctor has assessed the partial permanent disability as 50%. Ex.P9/Disability certificate was marked to prove the injuries sustained by the appellant. The Tribunal accepted the evidence of P.W.3/Doctor and fixed the partial permanent disability of the appellant as 50% and awarded a sum of Rs.1,00,000/- (Rs.50 X Rs.2,000/-) towards disability at the rate of Rs.2,000/- per percentage. The appellant has not produced any document to show that she suffered functional disability and there is a loss of earning capacity and therefore, the percentage method applied by the Tribunal is correct. The accident is of the year 2003 and the compensation awarded by the Tribunal towards disability is proper and the same does not warrant any interference by this Court.

9. According to the appellant, she took treatment in PIMS Hospital, Puducherry, from 25.10.2003 to 07.11.2003 and underwent surgeries on her head and subsequently, took treatment in the same hospital from 25.10.2003 to 02.12.2003. The Tribunal has awarded a sum of Rs.10,000/- towards transportation, attendant charges, loss of clothes and extra nourishment which are meagre. The appellant is entitled to compensation separately under these heads. A sum of Rs.5,000/-, Rs.25,000/-, Rs.1,000/- and Rs.25,000/- are awarded towards transportation, attendant charges, loss of clothes and extra nourishment respectively. The Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering and the same is meagre. Considering the nature of injuries sustained by the appellant, a sum of Rs.35,000/- is awarded towards pain and suffering. The amounts awarded by the Tribunal towards medical expenses and future medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the amount 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.	Pain and Suffering	20,000	35,000	enhanced
2.	Transportation, Attendant charges, loss of cloth and extra nourishment	10,000	5,000 25,000 1,000 25,000	enhanced
3.	Medical expenses	60,000	60,000	confirmed
4.	Future medical expenses	25,000	25,000	confirmed
5.	Loss of amenities	-	10,000	granted
6.	Disability	1,00,000	1,00,000	confirmed
	Total	Rs.2,15,000/-	Rs.2,86,000/-	enhanced by Rs.71,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,15,000/- is hereby enhanced to Rs.2,86,000/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the

Court fee, if any, on the enhanced amount of compensation. The second 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 at the first instance and recover the same from the first respondent/owner of the vehicle. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gbi

To

- 1.The Motor Accident Claims Tribunal cum Additional Judge,
Tindivanam.
- 2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.886

+1cc to Mr.G.Mohammed Aseef, Advocate SR.No.837

C.M.A.No.1926 of 2015

NRJK (CO)
GMY (21/08/2020)

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