

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1875 of 2013

V.Lakshmi

.. Appellant

Vs.

1.A.Senthilkumar
(R1 remained exparte before the Tribunal)

2.United India Insurance Co., Ltd,
134, Greams Road, Chennai-06.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2013 made in M.C.O.P.No.2240 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.D.Bhaskaran

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated

18.01.2013 made in M.C.O.P.No.2240 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai.

2.The appellant is claimant in M.C.O.P.No.2240 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.07.2009.

3.The case in brief, is as follows:

On 14.07.2009 at about 6.00 hours, when the appellant standing left side of the G.S.T.Road, in Guduvancherry, opposite to Fish market. At that time, a lorry bearing Reg.No.TN-38-AC-2476 came from Tambaram to Chengelpet in G.S.T.Road, driven by its driver in a rash and negligent manner and hit against the appellant. Due to the said impact, the appellant sustained grievous injuries. Hence, she filed a claim petition before the Tribunal.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the

accident occurred solely due to the injured. The offending vehicle was not insured with the Insurance Company and therefore, the 2nd respondent / Insurance Company is not liable to pay any compensation to the appellant.

6.During the trial, on the side of the appellant, three witnesses were examined and Exs.P1 to P16 were marked. On the side of the respondents, neither any oral evidence was let in nor any documents were marked.

7.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 Lorry belonging to 1st respondent and directed the 2nd respondent/Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.6,07,420/- as compensation to the appellant.

8.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

9.The learned counsel appearing for the appellant contended that in the accident, the appellant has sustained bilateral acetabular fracture and monteggia fracture at right forearm, Anterior column of left acetabulum Open

reduction and internal fixation-plating was done and open reduction and internal fixation for ulna fracture was done and closed reduction radial head was done and posterior capsular reinforcement at left hip was done. P.W.3/Doctor certified that the appellant suffered 60% disability and issued Ex.P15/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 20% and awarded compensation only for 20% disability. The appellant has taken treatment at Parvathy Hospital as in-patient from 19.07.2009 to 03.08.2009 and she is continuing her treatment as out-patient till now. The appellant was working as Machine Operator and was earning a sum of Rs.4,000/- per month at the time of accident. Due to the injuries sustained by her in the accident, she could continue the work as she was doing earlier. But, the Tribunal has fixed only a meagre sum of Rs.3,900/- as monthly income of the appellant while awarding compensation towards disability by adopting multiplier method. The Tribunal ought to have fixed a sum of Rs.4,000/- as monthly income of the appellant and awarded more compensation towards disability. The Tribunal has not awarded any amount towards loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

10.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the

2nd respondent/Insurance Company contended that the appellant has not produced any document to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the monthly income fixed by the Tribunal at Rs.3,900/- is on the higher side and the compensation awarded by the Tribunal towards disability by adopting multiplier method is excessive. The appellant is not entitled to any amount towards loss of amenities. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

12. From the materials available on record, it is seen that in the accident, the appellant sustained bilateral acetabular fracture and Monteggia fracture at right forearm, Anterior column of left acetabulum. Open reduction and internal fixation-plating was done and open reduction and internal fixation for ulna fracture was done and closed reduction radial head was done and posterior capsular reinforcement at left hip was done. The appellant has taken treatment at Parvathy Hospital as in-patient from 19.07.2009 to 03.08.2009 and she is continuing her treatment as out-patient till now. To prove the nature

of injuries and disability sustained by her in the accident, the appellant examined P.W.3/Doctor, who has assessed the disability of the appellant as 60% and marked the disability certificate as Ex.P15. The Tribunal considering the evidence of P.W.3/Doctor, Ex.P15/disability certificate and nature of injuries, fixed disability suffered by the appellant at 20% for the whole body and awarded compensation towards 20% disability by adopting multiplier method. The reason given by the Tribunal for fixing disability of the appellant at 20% for whole body is not proper and the same is enhanced to 30%.

13.It is the contention of the appellant that she was working as Machine Operator and was earning a sum of Rs.4,000/- per month. To prove the same, the appellant produced Ex.P5/salary certificate is marked in which it is mentioned that the gross monthly fixed salary is Rs.3,900/-. Hence, the Tribunal fixed a sum of Rs.3,900/- per month as notional income of the appellant. The accident is of the year 2009 and the monthly income fixed by the Tribunal is proper. As per Ex.P3/wound certificate, the appellant was aged 28 years at the time of accident. The Tribunal applied correct multiplier '18'. Thus, the amount awarded by the Tribunal towards loss of earning power is modified to Rs.2,52,720/- (Rs.3,900/- X 12 X 18 X 30/100). The Tribunal has awarded a sum of Rs.23,400/- as loss of income for six months and the same is meager and hence, it is enhanced to a sum of Rs.39,000/- for ten months at the

rate of Rs.3,900/- per month. Due to the nature of injuries and disability suffered, a sum of Rs.25,000/- is granted towards loss of amenities. A sum of Rs.44,560/-, Rs.8,000/-, Rs.1,50,000/- and Rs.50,000/- awarded by the Tribunal towards transportation, extra nourishment, future medical expenses and pain & suffering are meager and the same are enhanced to a sum of Rs.59,560/-, Rs.13,000/-, Rs.1,64,000/- and Rs.65,000/- respectively. The amounts awarded by the Tribunal under other heads are 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	23,400/-	39,000/-	Enhanced
2.	Transportation	44,560/-	59,560/-	Enhanced
3.	Extra nourishment	8,000/-	13,000/-	Enhanced
4.	Damage to cloth and material	1,000/-	1,000/-	Confirmed
5.	Medical expenses	1,61,980/-	1,61,980/-	Confirmed
6.	Future medical expenses	1,50,000/-	1,64,000/-	Enhanced
7.	Pain & suffering	50,000/-	65,000/-	Enhanced
8.	Loss of Earning Power	1,68,480/-	2,52,720/-	Enhanced
9.	Loss of amenities	-	25,000/-	Granted
	Total	6,07,420/-	7,81,260/-	Enhanced by Rs.1,73,840/-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,07,420/- is hereby enhanced to Rs.7,81,260/- 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 necessary Court fee, if any, on the enhanced compensation. 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.2240 of 2009 on the file of the Motor Accident Claims Tribunal, Small Causes Court No.III, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs.

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18.02.2020

Index : Yes / No

Internet : Yes / No

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V.BHAVANI SUBBAROYAN, J.,

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To

- 1.The III Judge,
The Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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