

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2016 of 2012

G.Revathy

.. Appellant/Claimant

Vs.

1.R.Manohar

2.The United India Insurance Company Limited,
No.14, Whites road, Sudharsan Buildings II floor,
Royapettah, Chennai - 600 014. .. Respondents/respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.07.2011 made in M.C.O.P.No.272 of 2007 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.Sunder Mohan
for Mr.Sundarraja Mukund M

For R1 : served-No appearance

For R2 : Ms.R.Rathna Thara

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 08.07.2011 made in M.C.O.P.No.272 of 2007 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.272 of 2007 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. She filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.08.2006.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.4,75,800/- as compensation to the appellant.

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

6.The learned counsel appearing for the appellant contended that in the accident the appellant sustained grievous multiple injuries such as contusion over right shoulder, undisplaced acetabulum fracture, contusion over left thigh, pulmonary embolism, left ankle air line crack, crush injury over right foot and multiple injuries all over her body. She has taken treatment as in-patient on four occasions from 16.08.2006 to 17.08.2006, 17.08.2006 to 06.09.2006, 13.09.2006 to 22.09.2006 and from 04.11.2006 to 08.11.2006 in three different hospitals. Due to the injuries, the appellant is totally disabled. Before the accident, the appellant was doing Saree Business and was earning a sum of Rs.8,000/- to Rs.10,000/- per month. Due to the injuries, she could not continue her business. To prove the nature of injuries and disability, the appellant examined two Doctors as P.W.2 and P.W.3. Both P.W.2 & P.W.3/Doctors examined the appellant and assessed that appellant suffered disability of 40% and 45% respectively. The respondents did not let in any evidence to disprove the contention of the appellant and evidence of P.W.2 & P.W.3/Doctors. The Tribunal erroneously reduced the percentage of disability to 45% and converted the disability to whole body as 15% and granted meagre amounts as compensation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

7.Per contra, Ms.R.Rathna Thara, learned counsel appearing for the 2nd respondent-Insurance Company contended that P.W.2 & P.W.3/Doctors assessed the disability for two parts of the body and percentage of disability assessed by them are on the higher side. The Tribunal considering the nature of injuries, evidence of P.W.2 & P.W.3/Doctors, reduced the percentage of disability and converted the disability to whole body at 15% and awarded compensation. In addition to the amounts awarded for loss of earning power, the Tribunal also awarded compensation under other heads. In view of the same, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

8. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

9. 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.

10. From the materials available on record, it is seen that it is the contention of the appellant that in the accident she sustained multiple injuries all over the body and crush injury in right foot. Due to the injuries she suffered disability. At the time of accident, she was aged 23 years and was doing Saree Business and was earning a sum of Rs.8,000/- to Rs.10,000/- per month. The appellant is an Income Tax assessee. The Tribunal considering Ex.P16/I.T. Returns for the year 2003 - 2004, fixed a sum of Rs.7,000/- per month as notional income of the appellant. The accident occurred in the year 2006 and the notional income fixed by the Tribunal is not meagre. The appellant examined P.W.2 and P.W.3/Doctors who spoke about the nature of injuries and P.W.2/Doctor certified that appellant suffered 40% disability and P.W.3/Doctor certified that appellant suffered 45% disability, totally 85% of disability. The Tribunal reduced the percentage of disability to 45% without giving any reason. The respondents have not let in any contra evidence to disprove the evidence of appellant as P.W.1 and also the evidence of P.W.2 and P.W.3/Doctors and the assessment of percentage of disability is excessive. P.W.2 and P.W.3/Doctors are qualified Medical Practitioners. There is nothing on record for not accepting the percentage of disability assessed by P.W.2 & P.W.3/Doctors. The reduction of percentage of disability from 85% to 45% without giving any reason is not correct. The appellant is entitled to compensation for 85% of disability as assessed by P.W.2 & P.W.3/Doctors in the absence of any contra evidence. Due to the young age, the appellant would be earning more money in her future. Considering the nature of injuries, nature of avocation and age of the appellant, the functional disability and loss of earning power of the appellant is fixed at 45%. The appellant was aged 23 years at the time of accident and the multiplier applicable as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] is '18'. Thus, the compensation awarded by the Tribunal towards loss of earning power is enhanced to Rs.6,80,400/- (Rs.7,000/- X 12 X 18 X 45/100). The Tribunal awarded a sum of Rs.21,000/- towards loss of income. Due to the injuries sustained by her in the accident, the appellant would not have attended her work atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to

Rs.42,000/- (Rs.7,000/- X 6 months).

11. In the accident, the appellant suffered grievous injuries and took treatment as in-patient for four different spells in three different hospitals for 38 days. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. The appellant is entitled to a sum of Rs.25,000/- towards attendant charges. Due to the disability, the appellant is entitled to a sum of Rs.25,000/- towards loss of amenities. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment and pain and sufferings are meagre and the same are enhanced to Rs.15,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal towards disability, damages to clothes and medical expenses are just and reasonable and hence, the same are hereby confirmed.

12. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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.	Disability	30,000/-	30,000/-	Confirmed
2.	Pain and sufferings	15,000/-	25,000/-	Enhanced
3.	Loss of income	21,000/-	42,000/-	Enhanced
4.	Extra nourishment	2,000/-	15,000/-	Enhanced
5.	Transportation	21,000/-	21,000/-	Confirmed
6.	Medical expenses	1,59,000/-	1,59,000/-	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Loss of earning power	2,26,800/-	6,80,400/-	Enhanced
9.	Attendant charges	-	25,000/-	Granted

10	Loss of amenities	-	25,000/-	Granted
	Total	Rs.4,75,800/-	Rs.10,23,400/-	enhanced by Rs.5,47,600/-

13.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,75,800/- is hereby enhanced to Rs.10,23,400/- 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 on the enhanced amount of compensation now determined by this Court. 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.272 of 2007 on the file of the Motor Accidents 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. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

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

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

+2 cc to M/s.Sundarraja Mukund Advocate sr36048

C.M.A.No.2016 of 2012

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