

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.150 of 2020

Saroja .. Appellant /Petitioner

Vs.

1.Selvakumar

2.The National Insurance Co. Ltd.

Royal Towers, 185/1

Meyyanur road

Opp. ARRS multiplex theatre

Salem - 636 004.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2019 made in M.C.O.P.No.1055 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

R1 : Exparte before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.09.2019 made in M.C.O.P.No.1055 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is claimant in M.C.O.P.No.1055 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. She filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.12.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.2,17,361/- as compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the motorcycle.

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 was aged 67 years at the time of accident, she was working as a maid servant in a private school and was earning a sum of Rs.8,000/- per month. Due to the accident, the appellant suffered fracture of both bones of her right leg. The appellant has taken treatment as in-patient in Universal hospital, Salem, from 14.12.2016 to 19.12.2016, underwent surgery and interlocking nailing was fixed. After the accident, she could not do the work as she was doing earlier. The appellant is continuing her treatment and the Tribunal has not awarded any compensation towards future medical expenses. 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 appellant has not produced any document to prove that she is continuing her treatment and therefore, she is not entitled to any compensation towards future medical expenses. The Tribunal after considering all the materials available on record, awarded just compensation. 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 and perused all the materials available on record.

8.It is the contention of the appellant that she was aged 67 years at the time of accident, she was working as maid servant in a private school and was earning a sum of Rs.8,000/- per month. The appellant failed to prove her avocation and income. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- as monthly income of the appellant and awarded a

sum of Rs.45,000/- (Rs.7,500/- X 6) towards loss of income for six months. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.8,000/- is fixed as monthly income of the appellant. Thus, a sum of Rs.48,000/- (Rs.8,000/- X 6) is awarded towards loss of income for six months. In the accident, the appellant sustained fracture of both bones of her right leg upper 3rd. The Medical Board has assessed the disability of the appellant as 20%. The Tribunal accepted the same and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability at the rate of Rs.3,000/- per percentage of disability. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, a sum of Rs.1,00,000/- (Rs.5,000/- X 20%) is awarded towards disability.

9. According to the appellant, she has taken treatment as in-patient in Universal hospital, Salem, from 14.12.2016 to 19.12.2016. The Tribunal awarded a sum of Rs.5,000/-, Rs.5,000/-, Rs.3,000/- and Rs.1,000/- towards transportation, extra nourishment, attendant charges and damage to clothes respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment, attendant charges and damage to clothes are enhanced to a sum of Rs.10,000/-, Rs.10,000/-, Rs.5,000/- and Rs.2,000/- respectively. The appellant has not produced any document to prove that she is continuing treatment and therefore, she is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence, the same are hereby confirmed. 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 or reduced
1.	Disability	60,000	1,00,000	Enhanced
2.	Pain and suffering	20,000	20,000	Confirmed
3.	Loss of amenities	20,000	20,000	Confirmed
4.	Medical expenses	58,361	58,361	Confirmed
5.	Loss of income	45,000	48,000	Enhanced
6.	Transportation	5,000	10,000	Enhanced
7.	Extra nourishment	5,000	10,000	Enhanced
8.	Attendant charges	3,000	5,000	Enhanced
9.	Damage to clothes	1,000	2,000	Enhanced
	Total	2,17,361	2,73,361	Enhanced by Rs.56,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,17,361/- is hereby enhanced to Rs.2,73,361/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay 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 at the first instance and recover the same from the 1st 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. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.Special Subordinate Judge No.II
The Motor Accident Claims Tribunal
Salem.

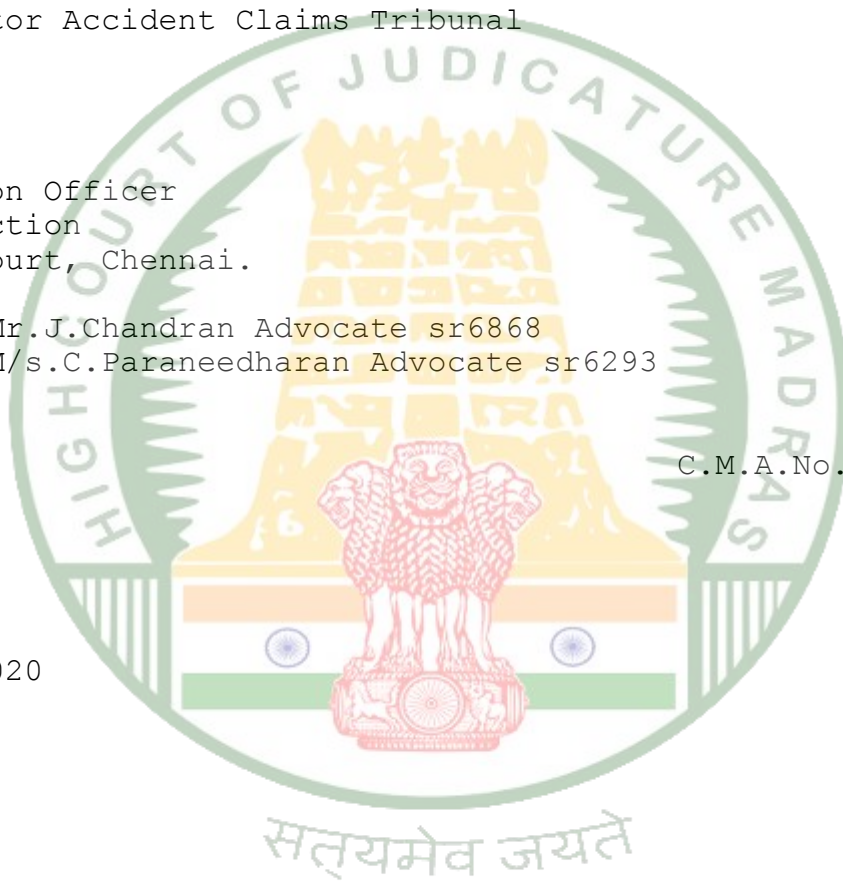
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The Section Officer
V.R.Section
High Court, Chennai.

+1 cc to Mr.J.Chandran Advocate sr6868
+1 cc to M/s.C.Paraneedharan Advocate sr6293

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