



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2684 of 2011

R. Gowri Bai

..Appellant/Petitioner

Versus

1. G. Venkatesan

2. The National Insurance Co. Ltd.,
No.661, Trunk Road, Poonamallee,
Chennai -56.

(R-1 was set exparte before the Tribunal)

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 15.12.2008 made in M.A.C.T.O.P.No.736 of 2006 on the file of the Motor Accident Claims Tribunal, IInd Judge, (Small Causes Court), Chennai.

For Appellant : Mr.C. Munuswamy
for M/s. C & K Law Firm

For Respondent-2 : Mr. C.R. Krishnamoorthy
R1 - Ex-parte

J U D G M E N T

The claimant before the Tribunal has preferred the appeal against the Judgment and order in M.A.C.T.O.P.No.736 of 2006 dated 15.12.2008 on the file of the Motor Accident Claims Tribunal, IInd Judge, (Small Causes Court), Chennai, seeking for enhancement of compensation.

2. The brief of the case is as follows:

On 31.12.2005 at about 9.15 hours, when the claimant/appellant herein was walking along the Kasi Theatre over bridge from East to West Direction near central median in



order to sweep the road, the Mahendra Van bearing Registration No.TN-09-Q-2767 came from North to South direction in a rash and negligent manner without following the traffic rules and regulations and dashed against the claimant/appellant herein. Due to which the claimant/appellant sustained injuries and claimed compensation by filing claim petition in M.A.C.T.O.P.No.736 of 2006 on the file of the Motor Accident Claims Tribunal, IInd Judge, (Small Causes Court), Chennai. The Tribunal awarded a sum of Rs.1,02,680/- to the claimant/appellant herein as against the claims of Rs.5,00,000/- prayed by the claimant.

3. Aggrieved over the same, the claimant has filed the present appeal seeking for enhancement of the compensation awarded by the tribunal.

4. The learned counsel appearing on behalf of the appellant submits that the Tribunal has awarded a meagre sum of Rs.1,02,680/- without taking into consideration the nature of injuries suffered by the appellant in the said accident and even permanent disability certificate @70% assessed by the Doctor P.W.2, the tribunal has fixed the permanent disability @ 55% without adopting multiplier is not sustainable in law. Thus, she was entitled to a sum of Rs.5,00,000/- as compensation.

5. On the other hand, the learned Counsel for the Insurance Company would submit that the percentage of the disability was reduced from 70% to 55% on the basis of oral evidence of P.W.2 and the permanent disability certificate was issued after three years from the date of accident.

6. Heard both sides and perused the available materials on records. The Respondent 1 was set ex-parte before the Tribunal as well as before this Court.

7. During the Trial before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P9 were marked on the side of the appellant. On the part of the 2nd respondent none was examined and Ex.R1, is marked by consent.

8. The factum and the manner of the accident being rash and negligence on the part of the 1st respondent according to the findings of the Tribunal and entitlement of the claimant/appellant herein under Section 163A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

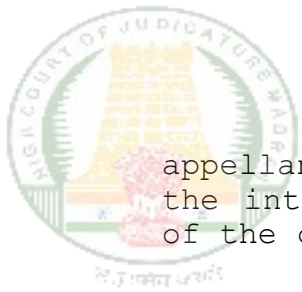
9. After going through the oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P8, disability certificate, this Court is of the considered view that since the appellant



was working as a temporary and daily wages sanitary worker, she would have been confirmed in the same job, it will be appropriate to fix her permanent disability @70% as certified by P.W.2 instead of 55% permanent disability fixed by the Tribunal. Further, the Tribunal has awarded only Rs.1,000/- per percentage, considering the nature of injuries viz., fractures of right femur & right 2,3,4, and 5 ribs. Taking into consideration of the fact that the claimant/appellant herein has suffered permanent disability, as per Ex.P8, she would not be able to do her work as before, this Court is inclined to enhance to Rs.1500/- per percentage from Rs.1,000/- towards permanent disability. Accordingly, a sum of Rs.1,05,000/- (70 X 1500) is hereby awarded towards permanent disability. That apart, the amount awarded under the head of Transport to hospital is very meagre, hence, the same is enhanced to Rs.5,000/- except the aforesaid modifications, the amount awarded by the Tribunal under the other heads are confirmed as such and the details of compensation are as under:

SL. No.	Particulars	Amount awarded by the Tribunal (in Rs.)	Amount (in Rs.)
1	Permanent Disability	55,000.00	1,05,000.00
2	Pain, shock and Sufferings	20,000.00	20,000.00
3	Transport to Hospital	1,000.00	5,000.00
4	Extra-nourishment	5,000.00	5,000.00
5	Damages to Clothing	1,000.00	1,000.00
6	Medical Expenses	1,180.00	1,180.00
7	Service of attendants	2,500.00	2,500.00
8	Loss of earnings	12,000.00	12,000.00
9	Mental Agony	5,000.00	5,000.00
Total Amount		1,02,680.00	1,56,680.00

10. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.54,000/- from Rs.1,02,680/- to Rs.1,56,680/- with interest @ 7.5% per annum instead of 9.5% p.a. from the date of petition till the date of deposit excluding the period of 301 days as ordered by this Court dated 18.08.2011 in M.P.No.1 of 2010 for condoning the delay. The Insurance company/2nd respondent is directed to deposit the modified award amount within a period of four weeks from the date of receipt of copy of this order. On such deposit, the



appellant/claimant is permitted to withdraw the same along with the interest after paying appropriate Court fee for enhancement of the compensation.

11. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal in M.C.O.P. No.736 of 2006 dated 15.12.2008 is modified to the extent as indicated above. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

lbm

To

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

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.8381

+1cc to Mr.C.Munuswamy, Advocate, S.R.No.8313

C.M.A.No.2684 of 2011

CA(CO)
RLP(02/09/2021)