

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2022 of 2013

Rosi

.. Appellant/Petitioner

Vs.

1.V.Perumal

2.ICICI Lombard General Insurance Company Ltd.

1st floor, Arihant plaza

84/85, waltax road

Parry's corner

Chennai-600 003.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2013 made in M.C.O.P.No.1278 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional Court, (In-charge XVIII Additional Court), Chennai.

For Appellant : Mr.K.V.Muthuvisakan

For R2 : Mrs.R.Sreevidhya

R1 : Exparte

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J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 09.01.2013 made in M.C.O.P.No.1278 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional Court, (In-charge XVIII Additional Court), Chennai.

2.The appellant is claimant in M.C.O.P.No.1278 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional Court, (In-charge XVIII Additional Court), Chennai. She filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.02.2010.

3.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 mini lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said mini lorry to jointly and severally pay a sum of Rs.5,17,200/- as compensation to the appellant.

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 contended that in the accident, the appellant suffered crush injury in the left foot and left foot was amputated. The appellant cannot stand, walk for a long time and she cannot climb staircase. P.W.2/Doctor examined the appellant and certified that she suffered 50% disability. The Tribunal without giving any reason, reduced the percentage of disability to 30%. The appellant was Managing Director of Rosy Enterprises, she is an income tax assessee and was earning a sum of Rs.25,000/- per month. The Tribunal without considering the evidence let in by the appellant before the Tribunal, fixed a sum of Rs.6,000/- per month as notional income of the appellant. The appellant is entitled to compensation by fixing a sum of Rs.25,000/- as monthly income of the appellant. The appellant has taken treatment as in-patient in Pavithra Hospital from 14.02.2010 to 18.02.2010 for 5 days and in Government Stanley Hospital from 19.02.2010 to 05.04.2010 for 46 days. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. The amounts awarded by the Tribunal towards transportation and extra nourishment 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 failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant, which is not meagre. The Tribunal considering the evidence of P.W.2/Doctor and the materials placed before it, fixed the monthly income of the appellant and adopted multiplier

method for awarding compensation towards disability. The amounts awarded by the Tribunal under different heads are excessive. 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 the entire materials on record.

8. It is the contention of the appellant that she was Managing Director of Rosy Enterprises and was earning a sum of Rs.25,000/- per month. The appellant produced Entrepreneur Certificate, which was marked as Ex.P5. The Tribunal considering Ex.P5 found some discrepancies with regard to name and rejected the same. The appellant claimed that she is an income tax assessee, but failed to file the documents to prove the income. In the absence of documents with regard to income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant. The accident is of the year 2010. The monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability. The Tribunal fixed the physical permanent disability at 40% and fixed only 30% disability for loss of earning power. The respondents have not let in any evidence to disprove the disability assessed by P.W.2/Doctor. In view of the same, the appellant is entitled to compensation for 50% disability. The appellant was aged 32 years at the time of accident. The Tribunal applied multiplier '17' as per II schedule. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is 16. Thus, the compensation awarded by the Tribunal towards loss of future earning capacity is modified to Rs.9,60,000/- (Rs.10,000/- X 12 X 16 X 50/100).

8(i) The appellant has taken treatment as in-patient in Pavithra Hospital from 14.02.2010 to 18.02.2010 and then in Government Stanley Hospital from 19.02.2010 to 05.04.2010 for 51 days. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damage to clothes. Considering the age, nature of injuries, disability and period of treatment taken by the appellant, Rs.30,000/-, Rs.30,000/- and Rs.2,000/- are awarded towards attendant charges, loss of amenities and damage to clothes respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.

9. 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 or reduced
1.	Loss of future earning capacity	3,67,200	9,60,000	Enhanced
2.	Loss of income for five months during treatment period	30,000	30,000	Confirmed
3.	Medical expenses	50,000	50,000	Confirmed
4.	Pain and suffering	50,000	50,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Attendant charges	-	30,000	Granted
8.	Loss of amenities	-	30,000	Granted
9.	Damage to clothes	-	2,000	Granted
	Total	5,17,200	11,72,000	Enhanced by Rs.6,54,800/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.5,17,200/- is hereby enhanced to Rs.11,72,000/- 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 necessary Court fee, if any, on the enhanced compensation. The respondents are jointly and severally 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. 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.XVII Additional Judge
(In-charge XVIII Additional Court)
Motor Accident Claims Tribunal
Chennai.

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

+1 cc to Mr.K.V.Muthuvisakan, Advocate Sr.No. 36051

+1 cc to M/s.R.Srividhya, Advocate Sr.No. 36520

C.M.A.No.2022 of 2013

VGII (CO)
RMP (16/04/2021)

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