

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2285 of 2012

P.Dhanalakshmi ... Appellant/Petitioner

Vs

1. M/s.T.V.Sundaram Iyengar and Sons Ltd.,
A/C Sundaram Motors,
No.180, Anna Salai, Chennai - 600 006.
(Was set exparte in the Trial Court)

2. The Royal Sundaram Alliance Insurance,
Company Limited,
No.45&46, Whites Road,
Chennai - 600 014. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.04.2012 made in MACT.OP.No.5076 of 2010 on the file of the VI Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.K.Suryanarayanan
for Mr.M.Swamikkannu

For Respondents: R1- Exparte
Ms.R.Sreevidhya for R2

J U D G M E N T

(This Appeal was heard through the Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 20.04.2012 passed by the VI Judge, Motor Accident Claims Tribunal, (Court of Small Causes), Chennai in MACT.OP.No.5076 of 2010.

2.Heard K.Suryanarayanan, learned Counsel for the Appellant and Ms.R.Sreevidhya, learned Counsel for the second respondent.

3.The Motor Accident Claims Tribunal under the impugned Award has awarded a sum of Rs.65,000/- as compensation to the claimant for the injuries sustained by her as a result of an accident caused by a vehicle insured with the second respondent. The details of the compensation awarded by the Tribunal are as follows:

Loss of earning for one month	
the rate of Rs.4,500/- per month	Rs.4,500/-
Transportation	Rs.3,000/-
Extra nourishment	Rs.2,000/-
Damage to clothes	Rs.500/-
Pain and suffering	Rs.15,000/-
Disability of 20% at Rs.2,000/-	Rs.40,000/-
per percentage	-----
Total	Rs.65,000/-

4.It is the case of the claimant that she sustained dislocation of her right shoulder as a result of an accident by a car bearing Registration No.TN-01-AL-5229 owned by the first respondent insured with the second respondent.

5.Before the Tribunal, the claimant has filed 10 documents which included the letter issued by Billroth Hospitals Ex.P3, Scan Report - Ex.P4, Medical Prescription - Ex.P5, ESI Card - Ex.P7, ESI Hospital OP Book - Ex.P8, Disability certificate - Ex.P9 and X-ray film - Ex.P10 and two witnesses were also examined on the side of the claimant namely the claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the second respondent, neither any witness was examined nor any document filed before the Tribunal. As seen from the evidence available on record, the nature of injuries sustained by the Appellant has also not been disputed by the respondents before the Tribunal.

6.It is the case of the Appellant/claimant that she was a tailor working in an export garment factory at the time of the accident and that she was earning a monthly income between Rs.7,500 and Rs.10,000/-. However, the Tribunal as seen from the impugned Award has come to the conclusion that the claimant was only a housewife and has assessed the notional income of the claimant only at Rs.4,500/- per month.

7.Insofar as the assessment of the disability compensation is concerned, the Tribunal under the impugned Award has considered Ex.-P9, the disability certificate which fixed the disability of the claimant at 30%. Even though, the disability certificate has assessed the disability of the claimant at 30%, the Tribunal has fixed the disability of the claimant only at 20%. The accident happened on 07.12.2010. The Tribunal under

the impugned Award has fixed the disability compensation at Rs.40,000/- based on the calculation that for every percentage of disability, the claimant is entitled for Rs.2,000/-.

8.The learned counsel for the Appellant also drew the attention of this Court to a Single bench Judgment of the Madras High Court in the case of National Insurance Co. Ltd., vs. G.Ramesh Kumar and other reported in 2013 2 TN MAC 583 and submitted that for an accident of the year 2009, the Madras High Court in the said reported decision has awarded Rs.2,000/- per percentage of disability. He would submit that the accident in the case on hand happened in the year 2010 and hence, the disability compensation awarded by the Tribunal calculated at Rs.2,000/- per percentage of disability is inadequate.

9.This Court finds force in the submission made by the learned counsel for the Appellant, considering the fact that the nature of injuries sustained by the claimant has not been disputed by the respondents before the Tribunal. Having dislocated her right shoulder and considering the year of the accident, the assessment of disability compensation by the Tribunal at Rs.2,000/- per percentage of disability is low.

10.Accordingly, this Court enhances to Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability assessed by the Tribunal. Further, as seen from the impugned Award, the Tribunal has not awarded any compensation towards medical expenses incurred by the claimant. However, the claimant was only treated as outpatient and was never hospitalized as seen from the evidence available on record. Since the claimant has not filed any medical bill to prove that she incurred medical expenses for her treatment, the Tribunal has rejected her claim for medical expenses. Considering an overall perspective of the matter, the claimant is entitled only for an additional sum of Rs.20,000/- towards disability compensation calculated at the rate of Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability assessed by the Tribunal.

11.In respect of other heads under which compensation has been awarded by the Tribunal, there is no scope for interference by this Court.

12.The award of the Tribunal is modified as follows:

Loss of earning for one month

the rate of Rs.4,500/- per month	Rs.4,500/-
Transportation	Rs.3,000/-
Extra nourishment	Rs.2,000/-
Damage to clothes	Rs.500/-
Pain and suffering	Rs.15,000/-

