

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3547 of 2011

K.Shanti

.. Appellant/Petitioner

Vs.

1.E.Gopal

2.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.02.2009 made in M.C.O.P.No.1060 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court No.I, Chennai.

For Appellant : Ms.Ramya V.Rao
for M/s.Senthil Swamy Associates

For R2 : Mr.D.Bhaskaran
R1 : Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 04.02.2009 made in M.C.O.P.No.1060 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court No.I, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1060 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court No.I, Chennai. She filed the above said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 25.12.2001.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred 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 the insurer of the motorcycle to pay a sum of Rs.49,000/- 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 sustained grievous injuries. P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.P10/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 20% and awarded compensation. The Tribunal ought to have awarded compensation for 30% disability. The appellant has taken treatment in the hospital as in-patient for 8 days from 26.12.2001 to 02.01.2002. The Tribunal has not awarded any amount towards attendant charges, loss of amenities, future loss of earning capacity and damages to clothes. The amounts awarded by the Tribunal towards transportation, extra nourishment and pain and sufferings are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 30% to 20% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and also the assessment of disability will vary by 5% from one Doctor to another. Therefore, the appellant is not entitled to compensation for 30% disability. The appellant is not entitled to any amount towards attendant charges, loss of amenities, future loss of earning capacity and damages to clothes. The amounts awarded by the Tribunal under different heads are not meagre. 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-Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that the appellant sustained grievous injuries in the accident and to prove the same, the appellant examined P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 30% disability and issued Ex.P10/disability certificate to that effect. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.2/Doctor and Ex.P10/disability certificate. The Tribunal reduced the percentage of disability to 20% on the ground that

P.W.2/Doctor is not the Doctor who treated the appellant and also the assessment of disability will vary by 5% from one Doctor to another and awarded a sum of Rs.40,000/- towards 20% of disability at the rate of Rs.2,000/- per percentage of disability. The accident occurred in the year 2001 and the compensation awarded by the Tribunal towards disability is excessive. Hence, the appellant is not entitled to any enhancement towards disability. The appellant has taken treatment in the hospital as in-patient for 8 days from 26.12.2001 to 02.01.2001 and the Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes. Therefore, the appellant is entitled to a sum of Rs.5,000/- towards attendant charges, Rs.10,000/- towards loss of amenities and Rs.1,000/- towards damages to clothes respectively. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are enhanced to Rs.5,000/- each. In view of the excess amount awarded by the Tribunal towards disability, the appellant is not entitled to further enhancement. The compensation awarded by the Tribunal towards pain and sufferings is just and reasonable and hence, the same is confirmed. The appellant has not proved that she suffered functional disability and lost her earning capacity. In view of the same, she is not entitled to any amount towards loss of earning capacity. 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	40,000/-	40,000/-	Confirmed
2.	Pain and sufferings	5,000/-	5,000/-	Confirmed
3.	Extra nourishment	2,000/-	5,000/-	Enhanced
4.	Transportation	2,000/-	5,000/-	Enhanced
5.	Attendant charges	-	5,000/-	Granted
6.	Loss of amenities	-	10,000/-	Granted
7.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.49,000/-	Rs.71,000/-	enhanced by Rs.22,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.49,000/- is hereby enhanced to Rs.71,000/- together with

interest at the rate of 9% per annum from the date of petition till the date of deposit. 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.1060 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Tract Court No.I, 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. It is made clear that the appellant is not entitled to any interest for Rs.22,000/- the amount now enhanced by this Court, as per the order of this Court dated 14.11.2011 made in M.P.No.1 of 2010 in C.M.A.No.SR.34626 of 2010. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Fast Tract Court No.I,
Chennai.

Copy To:

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

+lcc to Mr.D.Bhaskaran, Advocate, sr no.24440

C.M.A.No.3547 of 2011

AD(CO)
RMP(19/04/2021)