

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2277 of 2013

Tmt.M.Thilagam

..Appellant/Claimant

Versus

1.V.S. Shyam Kumar

2.The National Insurance Co. Ltd.,
No.66, Greams Road,
Chennai - 600 006.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 30.11.2011 made in M.C.O.P.No.4483 of 2007 on the file of the Motor Accident Claims Tribunal, II-Small Causes Court Judge, Chennai.

For Appellant : Mr. T.G. Balachandran
For 2nd Respondent : Mr.D. Bhaskaran
For 1st Respondent : No Appearance

J U D G M E N T

This appeal has been filed by the appellant against the Judgment and order in M.C.O.P. No.4483 of 2007 dated 30.11.2011 on the file of the Motor Accident Claims Tribunal, II-Small Causes Court Judge, Chennai, seeking for enhancement of compensation.

2.The facts of the case briefly are as under:

On 06.08.2003 at 8.30am, while the claimant/appellant herein was riding as a pillion rider in a motor Cycle bearing registration No.TN 01 M 9341, she was hit by a Maruti Udyog Car bearing registration No.TN 05 V 8224 due to rash and negligent driving of the Motor car's driver. Thereby, the claimant/appellant herein have sustained grievous injuries and was treated as inpatient in the Government General Hospital from 14.10.2007 till 31.10.2007. Due to the injuries in the

accident, the claimant/appellant herein has filed claim petition before the Tribunal in M.C.O.P. No.4483 of 2007 seeking for compensation of Rs.6,00,000/- (Rupees Six Lakh Only). However, the Tribunal has awarded a compensation of Rs.1,53,300/- (Rupees One Lakh Fifty Three Thousand and Three Hundred Only) as compensation to the claimant/appellant herein.

3. Being aggrieved over the aforesaid award, the claimant/appellant herein has preferred the present appeal seeking for enhancement of compensation.

4. The learned counsel for the appellant would submit that the Tribunal ought to have passed award of compensation as sought by the appellant considering the age and avocation of the appellant as well as severe injuries sustained by her in the accident. However, the Tribunal has awarded a meagre amount of compensation without taking the aforesaid aspect. Hence, this Court may be pleased to award as sought by the appellant.

5. On the contrary, the learned counsel for the Insurance company would submit that the Tribunal has awarded the compensation in the aforesaid claim petition taking into consideration both oral and documentary evidences in a proper prospective which cannot be considered as meagre compensation. The appellant/claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

6. Heard, the learned counsel for both sides and perused entire oral and documentary evidence placed before this Court. Even though the notice served on the 1st respondent/owner of the vehicle and printed his name in the cause list, none appeared on behalf of the 1st respondent. Hence, he was set ex-parte before this Court.

7. The factum and manner of the accident being rash and negligent manner driving of the 1st respondent under Section 163-A is not dispute. The entitlement of the claimant is alone disputed seeking for enhancement of compensation after considering the age and avocation as well as injuries sustained by the claimant/appellant herein.

8. During the trial before the Tribunal, on the side of the appellant P.W.1 to P.W4 were examined and Ex.P1 to Ex.P11 were marked. However, neither any oral evidence was let in nor any documents were marked on the side of the respondents to prove their side.

9. On perusal of the entire records, it is seen that the Tribunal has awarded compensation relying on the Judgment in "Rajkumar Vs.Ajay Kumar" reported in 2011(1) MLJ page 779, and

"Sarla verma and others Vs.Delhi Transport Corporation and another" reported in 2009(6) SCC page 121. Further, no oral evidence was examined and no documents were marked by the 2nd respondent to disprove the entitlement of the claimant/appellant herein. Hence, this Court is not inclined to interfere with the award passed by the Tribunal under the heads of Permanent disability, Loss of earning, loss of income during treatment, pain and sufferings, and damage to clothes & articles other than under heads of Transport charges, Extra Nourishment and being to be added attendant charges since the appellant has sustained severe injuries namely fracture of right humerus bone, she should have been taken care by family members; she would have taken extra nourishment for improvement her health. Hence, taking into consideration the aforesaid aspect, this Court is inclined to modify and add the compensation towards the aforesaid head. Hence, the award passed by the Tribunal is modified as details given below inclusive of other heads passed by the Tribunal.

SL. No.	Particulars	Amount (in Rs.)
1	Loss of earnings Power/Capacity	91,800.00
2	Permanent disability	20,000.00
3	Loss of Income during treatment	13,500.00
4	Transport Charges	3,000.00
5	Extra Nourishment	5,000.00
6	Damages to clothes and articles	1,000.00
7	Medical Expenses	8,000.00
8	Attendant Charges	5,000.00
9	Pain and sufferings	15,000.00
Tota		1,62,300.00
1 Amount		0

10. Thus, the compensation of Rs.1,62,300/- (Rupees One Lakh Sixty Two Thousand and Three Hundred Only) is awarded to the claimant/appellant herein with interest @ 7.5% p.a. from the date of petition till the date of deposit. The Insurance Company is directed to deposit the aforesaid award amount within a period of four weeks from the date of receipt of copy of this order after deducting the deposited amount if any.

11. On such deposit, the appellant is permitted to withdraw the modified award amount as awarded by this Court.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.4483 of 2007 dated 30.11.2011. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To:

1. II- Judge, Small Causes Court Judge
Motor Accident Claims Tribunal,
Chennai.

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

+1 cc to M/s. T.G. Balachandran, Advocate Sr.No. 13578

C.M.A.No.2277 of 2013

SV(CO)
RMP(05/01/2021)