

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2721 of 2013

Milkamary

.. Appellant/Claimant

Vs.

1.N.Rajendran

2.The Oriental Insurance Company Limited,
No.8, Esplanade Road,
LIC Building,
Chennai 600 108.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.02.2007 made in M.C.O.P.No.4976 of 2000 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents: Mr.K.Vinod for
Mrs.Elveera Ravindran for R2

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 20.02.2007 made in M.C.O.P.No.4976 of 2000 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4976 of 2000 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by her in the accident that took place on 24.05.2000.

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 lorry belonging to the first respondent and directed the second respondent,

being insurer of the said lorry to pay a sum of Rs.89,047/- 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 the appellant sustained fracture of both bones of right leg, degloving injury on right foot and below right knee was amputated. Due to the fracture, she could not continue his work as she was doing earlier. The appellant examined the Doctor as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P10. The Tribunal having accepted the disability certificate issued by P.W.2/Doctor, awarded a meagre sum of Rs.30,000/- towards disability and earning power. The appellant was working as a coolie and was earning a sum of Rs.3,000/- per month. Without fixing the monthly income, the Tribunal awarded a meagre sum of Rs.9,000/- towards loss of earning. The Tribunal has not awarded any amount towards loss of amenities, attendant charges, mental agony and future medical expenses. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent- Insurance Company contended that in the absence of any evidence with regard to income of the appellant, the Tribunal has rightly fixed monthly income of the appellant at Rs.3,000/- and awarded a sum of Rs.9,000/- (Rs.3,000/- x 3) towards loss of income. The Tribunal after considering the materials available on record, has awarded just compensation. 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 learned counsel appearing for the second respondent and perused the entire materials on record.

8(a). It is the contention of the appellant that in the accident, she sustained fracture of both bones of right leg, degloving injury on right foot and below right knee was amputated. To substantiate the injuries sustained by her, the appellant examined Dr.N.Saichandran as P.W.2, who has assessed the disability of the appellant as 30% and marked the disability certificate as Ex.P10. The Tribunal accepting the percentage of disability assessed by P.W.2/Doctor, awarded a sum of Rs.30,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The accident is of the year 2000 and the amount awarded by the Tribunal towards disability is proper.

(b). The appellant has contended that she was working as a coolie and was earning a sum of Rs.3,000/- per month at the time of accident. She failed to prove the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.9,000/- towards loss of income for a period of three months. The accident is of the year 2000 and the monthly income fixed by the Tribunal is proper. Due to the injuries, the appellant would not have worked atleast for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.18,000/- (Rs.3,000/- x 6).

(c). It is the contention of the appellant that he has taken treatment as in-patient in Government General Hospital, Chennai, for nearly 1 ½ months and has taken treatment as out-patient for 1 ½ years. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Considering the nature of injuries, period of treatment taken by the appellant and disability, the sum of Rs.4,000/- and Rs.10,000/- are awarded towards attendant charges and loss of amenities respectively. The Tribunal awarded meagre amounts towards transportation & extra nourishment and hence, the same are hereby enhanced to Rs.2,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. 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.	Transportation	1,000/-	2,000/-	enhanced
2.	Extra nourishment	1,000/-	5,000/-	enhanced
3.	Medical expenses	38,047/-	38,047/-	confirmed
4.	Loss of earning	9,000/-	18,000/-	enhanced
5.	Pain & sufferings	10,000/-	10,000/-	confirmed
6.	Disability	30,000/-	30,000/-	confirmed
7.	Attendant charges	-	4,000/-	granted
8.	Loss of amenities	-	10,000/-	granted

	Total	Rs.89,047/-	Rs.1,17,047/-	Enhanced by Rs.28,000/-
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9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.89,047/- is hereby enhanced to Rs.1,17,047/- 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 the necessary Court fee, if any on the enhanced amount of compensation. The second respondent 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. 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vr

To

1. The Motor Accident Claims Tribunal,
III Small Causes Court,
Tiruvannamalai.

Copy To:

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

+1cc to Mrs. Elveera Ravindran, Advocate SR.No.24055

+1cc to M/s. M. Malar, Advocate SR.No.24234

C.M.A.No.2721 of 2013

SSI (CO)
GMY (23/11/2020)