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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1839 to 1841 of 2016

R.Panchavarnam	.. Appellant in C.M.A.No.1839 of 2016	Petitioner
Vimala	.. Appellant in C.M.A.No.1840 of 2016	
J.Aruna Devi	.. Appellant in C.M.A.No.1841 of 2016	

Vs.

1.R.Devi

2.The National Insurance Company Ltd.,
No.939, Sathy Road, Gandhipuram,
Coimbatore - 641 012

.. Respondents in all the appeals/Respondents

(The 1st respondent remained exparte before the Tribunal, hence notice may be dispensed with for the 1st respondent in all the appeals)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.10.2013 made in M.C.O.P.Nos.852, 860 and 928 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam.

In all C.M.As :

For Appellants : Mr.Ma.Pa.Thangavel

R1 : Exparte

For R2 : Mr.S.Vadivel

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 28.10.2013 made in



M.C.O.P.Nos.852, 860 and 928 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants are claimants in M.C.O.P.Nos.852, 860 and 928 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam. The appellants/claimants in C.M.A.Nos.1839 to 1841 of 2016 [M.C.O.P.Nos.852, 860 and 928 of 2010] filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 24.08.2010.

4.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 van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said van to pay various amounts as compensation to the appellants/claimants in C.M.A.Nos.1839 to 1841 of 2016 [M.C.O.P.Nos.852, 860 and 928 of 2010].

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants/claimants have come out with the present appeals seeking enhancement of compensation.

6.The learned counsel appearing for the appellants/claimants has made the following submissions:

(i)In C.M.A.No.1839 of 2016 (M.C.O.P.No.852 of 2010), the appellant was aged 50 years at the time of the accident, she was doing Provision Store and was earning a sum of Rs.6,000/- per month. The Tribunal without considering the same, has fixed a sum of Rs.3,500/- as monthly income of the appellant. As per the judgment of the Hon'ble Apex Court, a sum of Rs.4,500/- is fixed as notional income for the year 1994 itself. As per the decision of Hon'ble Division Bench of this Court, a sum of Rs.9,000/- per month was fixed as notional income for the accident that occurred in the year 2008. Due to the accident, the appellant sustained fracture of 1,2,3,4 ribs on the right side, fracture of 1st rib on the left side, D4, D5 vertebrae, laceration over left eye and underwent surgeries. She took treatment as in-patient in the hospital from 24.08.2010 to 07.09.2010 for 14 days. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 40%. The appellant has suffered functional disability and the Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning. The Tribunal has awarded meagre amounts towards transportation, extra nourishment, disability, loss of income and pain &



suffering, without considering the nature of injuries sustained by the appellant. The Tribunal has not awarded any amount towards loss of amenities.

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(ii) In C.M.A.No.1840 of 2016 (M.C.O.P.No.860 of 2010), the appellant was aged 50 years at the time of the accident, she was working as a tailor and was earning a sum of Rs.6,000/- per month. The Tribunal without considering the same, has fixed a sum of Rs.4,000/- as monthly income of the appellant. As per the judgment of the Hon'ble Apex Court, a sum of Rs.4,500/- is fixed as notional income for the year 1994 itself. As per the decision of Hon'ble Division Bench of this Court, a sum of Rs.9,000/- per month was fixed as notional income for the accident that occurred in the year 2008. Due to the accident, the appellant sustained fracture of left tibia, with bimalleolar, distal radius fracture in right wrist. She took treatment as in-patient in the hospital from 26.08.2010 to 02.09.2010 for 7 days, 28.09.2010 to 29.09.2010 for two days and 15.11.2010 to 20.11.2010. She underwent surgery, K-wire fixed, SSG was done over right forearm and due to the grievous injuries, she was totally bed ridden. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 80%. The appellant has suffered functional disability and the Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning. The Tribunal has awarded meagre amounts towards transportation, extra nourishment, disability, loss of income, and pain & suffering, without considering the nature of injuries sustained by the appellant. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities.

(iii) In C.M.A.No.1841 of 2016 (M.C.O.P.No.928 of 2010), the appellant was aged 28 years at the time of the accident, she was working as a tailor and was earning a sum of Rs.7,500/- per month. The Tribunal without considering the same, has fixed a sum of Rs.3,500/- as monthly income of the appellant. As per the judgment of the Hon'ble Apex Court, a sum of Rs.4,500/- is fixed as notional income for the year 1994 itself. As per the decision of Hon'ble Division Bench of this Court, a sum of Rs.9,000/- per month was fixed as notional income for the accident that occurred in the year 2008. Due to the accident, the appellant sustained grievous injuries and on spinal cord, hips, neck, head and she underwent various surgeries. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 35%. The appellant has suffered functional disability and the Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning. The Tribunal has awarded meagre amounts towards transportation, extra nourishment, disability, loss of income and pain & suffering, without considering the nature of injuries sustained by the appellant. The Tribunal has not awarded any



amount towards loss of amenities and prayed for enhancement of compensation.

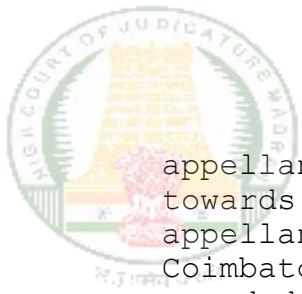
7. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellants/claimants have not proved that they suffered functional disability. In the absence of any documentary evidence to prove that the appellants/claimants suffered functional disability, the percentage method applied by the Tribunal is proper. The Tribunal after considering the materials available on record, has awarded just compensation. The appellants/claimants have not made out any case for enhancement of compensation and prayed for dismissal of the appeals.

8. Heard the learned counsel appearing for the appellants/claimants as well as the 2nd respondent/Insurance Company and perused the materials available on record.

9. (i) C.M.A.No.1839 of 2016 (M.C.O.P.No.852 of 2010):

From the materials available on record, it is seen that the appellant has contended that she sustained fracture of 1,2,3,4 ribs on right side, fracture of 1st rib on left side and D4 & D5 vertebrae. She also sustained laceration over left eye laterally for which she was treated conservatively. Ex.P11/C.T.Scan of abdomen-Report was marked to show that the appellant suffered left sided rectus sheath hematoma. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 40%. The 2nd respondent/Insurance Company has not adduced any contra evidence to the evidence of P.W.9/Doctor that the appellant suffered 40% disability and not filed any application for referring the appellant to Medical Board. In view of the same, 40% disability assessed by the Doctor is correct. The Tribunal has granted only Rs.35,000/- for 40% disability and the same is meagre. The appellant is entitled to a sum of Rs.2,000/- per percentage of disability. Accordingly, a sum of Rs.80,000/- (Rs.2,000/- X 40%) is awarded towards disability.

(ii) According to the appellant, she was aged 50 years at the time of accident and was earning a sum of Rs.6,000/- per month by doing Provision Store. The appellant has not filed any document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.3,500/- as monthly income of the appellant and awarded a sum of Rs.14,000/- towards loss of income for a period of four months. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,500/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended her work atleast for a period of six months. Therefore, the



appellant is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. According to the appellant, she took treatment as in-patient in K.G. Hospital, Coimbatore from 24.08.2010 to 07.09.2010. A sum of Rs.7,000/- awarded by the Tribunal towards attendant charges is meagre and the same is enhanced to Rs.15,000/-. A sum of Rs.10,000/- awarded by the Tribunal altogether towards transportation & extra nourishment is meagre and hence, a sum of Rs.5,000/- and Rs.15,000/- are awarded towards transportation and extra nourishment respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries sustained by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.1839 of 2016 (M.C.O.P.No.852 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	14,000	39,000	Enhanced
2.	Transportation and extra nourishment	10,000	5,000 15,000	Enhanced
3.	Medical expenses	73,000	73,000	Confirmed
4.	Attendant charges	7,000	15,000	Enhanced
5.	Pain and sufferings	25,000	25,000	Confirmed
6.	Disability	35,000	80,000	Enhanced
7.	Loss of amenities	-	10,000	Granted
	Total	Rs.1,64,000/-	Rs.2,62,000 /-	Enhanced by Rs.98,000/-

10.(i) In C.M.A.No.1840 of 2016 (M.C.O.P.No.860 of 2010):

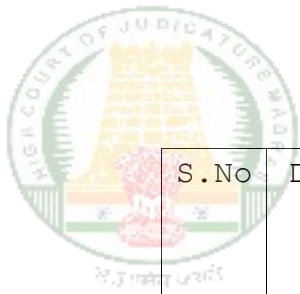
From the materials available on record, it is seen that the appellant has contended that she sustained fracture of left tibia with bimalleolar, distal radius fracture in right wrist, K-wire fixed, SSG was done over right forearm and due to the



grievous injuries she was totally bed ridden and she underwent various surgeries. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 80%. The 2nd respondent/Insurance Company has not adduced any contra evidence to the evidence of P.W.9/Doctor that the appellant suffered 80% disability and not filed any application for referring the appellant to Medical Board. In view of the same, 80% disability assessed by the Doctor is correct. The Tribunal has granted only Rs.70,000/- for 80% disability and the same is meagre. The appellant is entitled a sum of Rs.2,000/- per percentage of disability. Accordingly, a sum of Rs.1,60,000/- (Rs.2,000/- X 80%) is awarded towards disability.

(ii)According to the appellant, she was aged 50 years at the time of accident and was earning a sum of Rs.6,000/- per month by doing tailoring work. The appellant has not filed any document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.4,000/- as monthly income of the appellant and awarded a sum of Rs.12,000/- towards loss of income for a period of three months. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,000/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended her work atleast for a period of eight months. Therefore, the appellant is entitled to a sum of Rs.48,000/- (Rs.6,000/- X 8) towards loss of income for eight months. According to the appellant, she took treatment as in-patient in Thiraviyam Orthopaedic Hospital, Nagercoil from 26.08.2010 to 02.09.2010, 28.09.2010 to 29.09.2010 and 15.11.2010 to 20.11.2010. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,000/- is awarded towards attendant charges. A sum of Rs.6,000/- awarded by the Tribunal altogether towards transportation & extra nourishment is meagre and a sum of Rs.5,000/- and Rs.15,000/- are awarded towards transportation and extra nourishment respectively. The amount awarded by the Tribunal towards pain & suffering is meagre and the same is enhanced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries sustained by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.1840 of 2016 (M.C.O.P.No.860 of 2010):



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	12,000	48,000	Enhanced
2.	Transportation and extra nourishment	6,000	5,000 15,000	Enhanced
3.	Medical expenses	32,000	32,000	Confirmed
4.	Attendant charges	-	15,000	Granted
5.	Pain and sufferings	20,000	40,000	Enhanced
6.	Disability	70,000	1,60,000	Enhanced
7.	Loss of amenities	-	10,000	Granted
	Total	Rs.1,40,000/-	Rs.3,25,000/-	Enhanced by Rs.1,85,000/-

11. (i) In C.M.A.No.1841 of 2016 (M.C.O.P.No.928 of 2010):

From the materials available on record, it is seen that the appellant has contended that she sustained fracture of D9 wedge compression. M.R.I. Report for cervical spine is marked as Ex.P27. P.W.9/Dr.A.K.Thambiraj has assessed the disability of the appellant as 35%. The 2nd respondent/Insurance Company has not let in any contra evidence to the evidence of P.W.9/Doctor that the appellant suffered 35% disability and not filed any application for referring the appellant to Medical Board. However, the Tribunal reduced the disability to 30% holding that the percentage of disability assessed by the doctor is lightly on the higher side, which is not proper. The Tribunal has granted only Rs.48,000/- for 30% disability at the rate of Rs.1,600/- per percentage which is meagre. The appellant is entitled to compensation for 35% disability. Accordingly, a sum of Rs.70,000/- (Rs.2,000/- X 35%) is awarded towards disability by awarding Rs.2,000/- per percentage of disability.

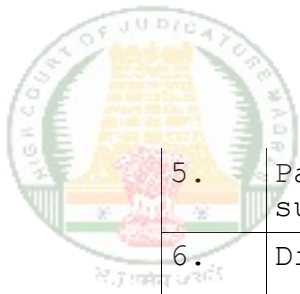
(ii) According to the appellant, she was aged 28 years at the time of accident and was earning a sum of Rs.7,500/- per month by doing tailoring work. The appellant has not filed any



document to prove the same. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal has fixed a sum of Rs.3,500/- as monthly income of the appellant and awarded a sum of Rs.10,500/- towards loss of income for a period of three months. The accident is of the year 2010 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.6,500/- is fixed as monthly income of the appellant. Due to the fracture, the appellant would not have attended her work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for six months. According to the appellant, she took treatment as in-patient in Government Hospital, Conoor from 24.08.2010 to 25.08.2010. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.15,000/- is awarded towards attendant charges. A sum of Rs.8,500/- awarded by the Tribunal altogether towards transportation & extra nourishment is meagre and the same is enhanced to Rs.5,000/- and Rs.15,000/- towards transportation and extra nourishment respectively. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries sustained by the appellant, a sum of Rs.5,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

C.M.A.No.1841 of 2016 (M.C.O.P.No.928 of 2010):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	10,500	39,000	Enhanced
2.	Transportation and extra nourishment	8,500	5,000 15,000	Enhanced
3.	Medical expenses	8,000	8,000	Confirmed
4.	Attendant charges	-	15,000	Granted



5.	Pain and sufferings	25,000	25,000	Confirmed
6.	Disability	48,000	70,000	Enhanced
7.	Loss of amenities	-	5,000	Granted
	Total	Rs.1,00,000/-	Rs.1,82,000/-	Enhanced by Rs.82,000/-

12. In the result, C.M.A.Nos.1839 to 1841 of 2016 are partly allowed and the compensation amounts awarded by the Tribunal at Rs.1,64,000/-, Rs.1,40,000/- and Rs.1,00,000/- are hereby enhanced to Rs.2,62,000/-, Rs.3,25,000/- and Rs.1,82,000/- respectively along with the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. In all the appeals, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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. On such deposit, the appellants/claimants in all the appeals are permitted to withdraw their respective enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

mtl

To

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Erode, Gobichettipalayam.

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

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.599

+3ccs to Mr.S.Vadivel, Advocate SR.No.39, 40, 41

C.M.A.Nos.1839 to 1841 of 2016

CA(CO)

GMV(19/08/2020)