

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.269 of 2020

S.Esther Kanimozhi

.. Appellant

Vs.

1.S.Ayubkhan

(R1 remained exparte before Tribunal.
Hence, notice dispensed with)

2.The Manager,
United India Insurance Company Limited,
Third Party Claim Office,
134, Greams Road,
Chennai - 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.10.2019 made in M.C.O.P.No.6028 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : P.T.Saleem Fathima

For R2 : Mr.D.Bhaskaran

R1 : Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 04.10.2019 made in M.C.O.P.No.6028 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.6028 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by her in the accident that took place on 05.09.2016.

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 auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the auto to pay a sum of Rs.87,600/- 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 suffered four fractures and a surgery was conducted and a tooth was removed and sustained multiple injuries all over her body and P.W.2/Doctor examined the appellant and certified that appellant suffered 28% disability and issued Ex.P17/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 5% and awarded compensation. The Tribunal ought to have awarded compensation for 28% disability. Due to the injuries sustained by the appellant in the accident, she lost her earning capacity and the Tribunal ought to have awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant was aged 43 years and was working as Lady Guard in Ravindra Services Private Limited, Chennai and was earning a sum of Rs.11,000/- per month. But the Tribunal has awarded compensation towards loss of income only for two months. The appellant has taken treatment in the SRMC Hospital as in-patient for 10 days from 05.09.2016 to 14.09.2016 and the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, attendant charges, damages to clothes 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 rightly reduced the percentage of disability from 28% to 5% as P.W.2/Doctor is a Private Doctor. Hence, the appellant is not entitled to compensation for 28% disability. The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to compensation towards loss of earning capacity by adopting multiplier method. 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 in the accident the appellant suffered four fractures and a surgery was conducted and a tooth was removed and also sustained multiple injuries all over her body. To prove the same, the appellant examined herself as P.W.1 and P.W.2/Doctor. P.W.2/Doctor examined the appellant and certified that appellant suffered 28% disability and issued Ex.P17/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.P17/disability certificate. The Tribunal reduced the percentage of disability to 5% on the ground that percentage of disability will vary from Doctor to Doctor and also Ex.P17/disability certificate was issued by a Private Doctor. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 28% disability. The accident occurred in the year 2016 and a sum of Rs.3,000/- awarded by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh and another, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to rise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,40,000/- (Rs.5,000/- X 28% of disability). The appellant has not proved that she suffered functional disability and lost her earning capacity. Therefore, she is not entitled to compensation towards loss of earning capacity by adopting multiplier method.

9. It is the contention of the appellant that she was aged 43 years and was working as Lady Guard in Ravindra Services Private Limited, Chennai and was earning a sum of Rs.11,000/- per month at the time of accident. To prove the same, the appellant marked Ex.P12/Identity Card and Ex.P13/Salary Slip. The Tribunal considering Exs.P12 and P13, fixed a sum of Rs.11,000/- per month as notional income of the appellant and awarded compensation towards loss of income for two months. Due to the injuries and disability sustained by her, she would not have attended her work atleast for a period of five months. Thus, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.55,000/- [Rs.11,000/- X 5 months]. From the materials on record, it is seen that the appellant has taken treatment in the SRMC Hospital as in-patient for 10 days from 05.09.2016 to 14.09.2016. Considering the nature of injuries and

period of treatment taken by the appellant, the amounts awarded by the Tribunal towards extra nourishment, pain and sufferings, attendant charges, damages to clothes and loss of amenities are meagre and the same are hereby enhanced to Rs.10,000/-, Rs.15,000/-, Rs.10,000/-, Rs.2,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal towards transportation, medical expenses and future medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Amount confirmed, enhanced or granted (Rs)
1.	Disability	15,000/-	1,40,000/-	Enhanced
2.	Pain and sufferings	5,000/-	15,000/-	Enhanced
3.	Extra nourishment	5,000/-	10,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Medical expenses	9,570/-	9,570/-	Confirmed
6.	Loss of income	22,000/-	55,000/-	Enhanced
7.	Loss of amenities	5,000/-	10,000/-	Enhanced
8.	Attendant charges	5,000/-	10,000/-	Enhanced
9.	Future medical expenses	15,000/-	15,000/-	Confirmed
10.	Damages to clothes	1,000/-	2,000/-	Enhanced
	Total	Rs.87,570/- rounded off to Rs.87,600/-	Rs.2,71,570/- rounded off to Rs.2,71,600/-	Enhanced by Rs.1,84,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,600/- is hereby enhanced to Rs.2,71,600/- together with interest at the rate of 7.5% 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.6028 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal,
The Special Subordinate Judge No.II,
Small Causes Court,
Chennai.

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

+1cc to Mr.P.T.Saleem Fathima, Advocate, S.R.No. 12849

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.12537

C.M.A.No.269 of 2020

SPD (CO)
GN (08/01/2021)

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