

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3413 OF 2013

Gowthami

... Appellant/Petitioner

..Vs..

1.G.Dhanasekhar

(First respondent was set exparte in the trial Court)

2.IFFCO TOKIO GENERAL INSURANCE CO., LTD.,

Sahas Embassy, Ground Floor,
145/131, Nelson Manickam Road,
Methanagar, Chennai - 600 029.

...Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.08.2012 made in MACTOP.No.1585 of 2010 on the file of the II Judge before the Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

For Appellant : Mr.S.Thambi

For Respondent 2 : Mr.Rajadurai,
for Mr.N.Vijayaraghavan
R1 set exparte

सत्यमेव जयते
J U D G M E N T

[This Appeal has been taken up for hearing through Video conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 14.08.2012 passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP.No.1585 of 2010.

2. The Appellant being unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has filed this appeal seeking for enhancement.

3. The finding regarding the negligence of the driver of the insured vehicle has now attained finality, since no appeal has been filed by the respondent Insurance Company.

4. Heard Mr.S.Thambi, learned counsel for the Appellant and Mr.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the second respondent. The first respondent remained exparte both before the Tribunal as well as this Court.

5. The issue that needs to be decided by this Court is whether the compensation awarded by the Tribunal to the Appellant/claimant is a just compensation or not and whether the Appellant/claimant is entitled for any enhancement of compensation or not.

6. The Tribunal under the impugned Award has directed the second respondent Insurance Corporation to pay the Appellant/claimant a sum of Rs.1,09,500/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of Income for 3 months	13,500/-
Transportation	5,000/-
Extra Nourishment	5,000/-
Damages to cloth	1,000/-
Medical Expenses	5,000/-
Pain and suffering	10,000/-
Disability of 35% at the rate of Rs.2000/- per disability	70,000/-
Total	1,09,500/-

7. The Appellant/claimant sustained left leg both bone fracture for which a surgery was also performed on him, as a result of the accident caused by the vehicle insured with the second respondent. The accident happened on 03.04.2010 and on the date of the accident, the Appellant/claimant was 46 years and she was employed as a housemaid.

8. Before the Tribunal, the Appellant/claimant filed five documents which were marked as Ex.P1 to Ex.P5 and two witnesses were examined namely the claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the second respondent/insurance company, neither any document was filed nor any witness examined.

9. The Tribunal has assessed the monthly income of the Appellant/claimant as Rs.4,500/- per month. Since the year of the accident is 2010, this Court is of the considered view that the assessment of the monthly income of the Appellant/claimant by the Tribunal who was a housemaid is a correct assessment. The Tribunal has awarded loss of income for three months at Rs.4,500/- per month. Considering the nature of injuries sustained by the Appellant/claimant as well as her avocation, it would be appropriate to award compensation to the Appellant/claimant for loss of income at least for a period of six months. Accordingly, this Court awards a sum of Rs.27,000/- as compensation towards loss of income for six months at Rs.4,500/- per month.

10. The Appellant/claimant was hospitalised for 29 days between 03.04.2010 and 01.05.2010 which is proved through the discharge summary issued by the Government Stanley Medical College and Hospital, Chennai which was marked as Ex.P2. PW2, the Doctor of the Appellant/claimant who has examined her assessed the disability of the Appellant/claimant at 40%. However, the Tribunal assessed the same only at 35% and assessed the disability compensation at Rs.70,000/- calculated at Rs.2,000/- per percentage of disability. Since the year of the accident is 2010, the disability compensation calculated at Rs.2,000/- per percentage of disability is low in the considered view of this Court. Accordingly, this Court awards a sum of Rs.1,05,000/- as compensation towards disability calculated at the rate of Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability assessed by the Tribunal.

11. This Court after considering the nature of the injuries sustained by the Appellant/claimant as indicated earlier, is of the considered view that the Compensation awarded by the Tribunal towards transport charges, extra nourishment and pain and suffering is too low. The compensation awarded by the Tribunal to the Appellant/claimant towards transportation, extra nourishment, pain and suffering is enhanced to Rs.10,000/-, Rs.10,000/- and Rs.30,000/- respectively from Rs.5,000/-, Rs.5,000/- and Rs.10,000/-.

12. The Tribunal has awarded a sum of Rs.1,000/- as compensation towards damage to clothes and another sum of Rs.5,000/- as compensation towards medical expenses which in the considered view of this Court is a just compensation and does not call for any interference. Accordingly, the same is confirmed.

13. The Tribunal has also not awarded any compensation towards attender charges and loss of amenities which she is

entitled to due to the nature of injuries sustained by her and due to the long period of hospitalisation for 29 days. This Court awards a sum of Rs.15,000/- towards attender charges and Rs.20,000/- towards loss of amenities respectively.

14. For the foregoing reasons, the amount awarded by the Tribunal under the impugned award is enhanced from Rs.1,09,500/- to Rs.2,16,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	13,500/- (Rs.4,500 for 3 months)	27,000/- (Rs.4,500 for 6 months)
Transportation	5,000/-	10,000/-
Extra Nourishment	5,000/-	10,000/-
Damage to cloth	1,000/-	1,000/-
Medical Expenses	5,000/-	5,000/-
Pain and Suffering	10,000/-	30,000/-
Disability of 50%	70,000/-	1,05,000/-
Loss of Amenities	Nil	20,000/-
Attender Charges	Nil	15,000/-
Total	1,09,500/-	2,23,000/-

Conclusion:

15. In the result, this appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.1,09,500/- to Rs.2,23,000/-. The second respondent Insurance Company is directed to deposit the modified award amount, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.1585 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Appellant/claimant is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.1585 of 2010 by filing an appropriate application. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

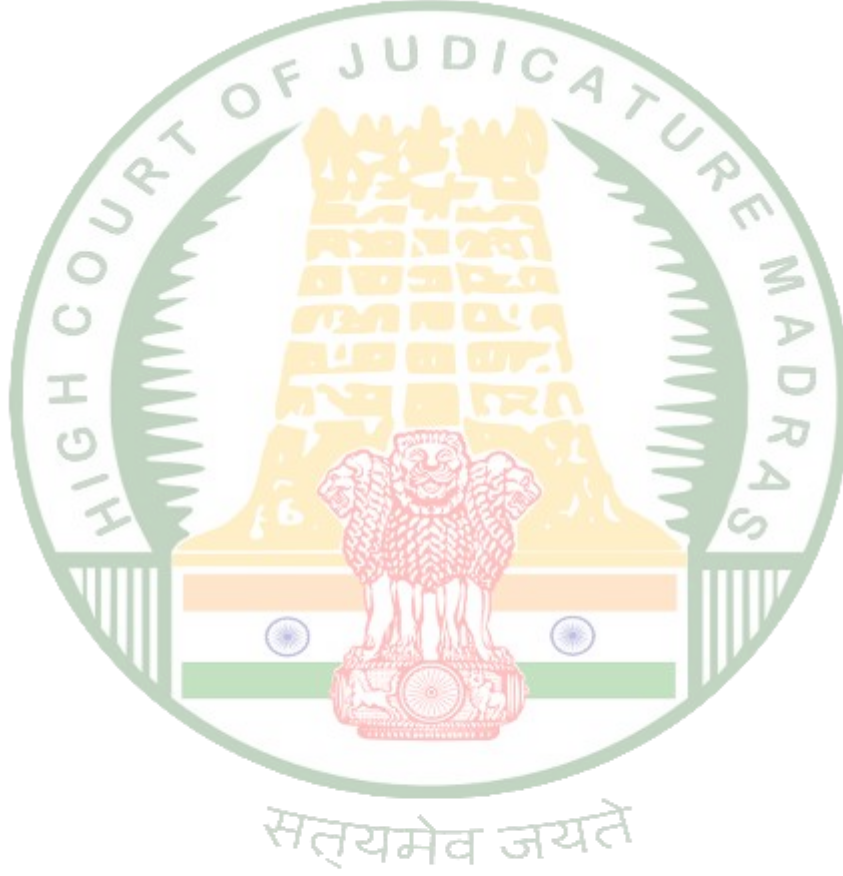
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To

1. The II Judge,
Court of Small Causes, Chennai.
2. The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.3413 of 2013

GMR (CO)
CS/01/02/2021



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