

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2390 of 2016

Rohini

.. Appellant/Claimant

Vs.

1. Visual Graphics Computing
Services India Pvt. Limited
Unit 4, 5, 5th street
Ascendas International Tech Park
CSIR road, Tharamani, Chennai-113.
2. Reliance General Insurance Company Limited
Unit No.1, III floor
23, Spurtank road
Chetpet, Chennai-31. ... Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.06.2016 made in M.C.O.P.No.815 of 2011 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Thiruvallur at Poonamallee.

For Appellant : Ms.S.Ramya for Mr.J.Mahalingam
For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 01.06.2016 made in M.C.O.P.No.815 of 2011 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Thiruvallur at Poonamallee.

2.The appellant is claimant in M.C.O.P.No.815 of 2011 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Thiruvallur at Poonamallee. She filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 22.08.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.89,727/- as compensation to the appellant at first instance and recover the same from the 1st respondent.

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/claimant contended that the appellant has suffered communitied fracture shaft of tibia middle 3rd and facial injuries, resulting in disfiguration of face. The appellant took treatment as in-patient in Vijaya Health Centre, Chennai, from 22.08.2008 to 28.08.2008 and subsequently, took treatment as out-patient for six months. Due to the fracture of tibia on her left leg, the appellant is unable to walk, stand, sit cross legged and could not do her work without help of others. At the time of accident, the appellant was only 14 years old and she was studying in Xth standard. Due to the injuries, she could not able to concentrate on her studies. Therefore, the appellant has suffered functional disability. P.W.2/Doctor has assessed the disability of the appellant as 30%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The Tribunal has not awarded any amount towards attendant charges, disfiguration of face, mental agony, loss of amenities and future loss of earning power. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant was a student at the time of accident and hence, no loss of income arise. The appellant has not proved that she suffered functional disability. In the absence of any documentary evidence to prove that the appellant 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 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 and perused all the materials available on record.

8.It is the contention of the appellant that she sustained

communited fracture of left tibia middle 3rd and external fixation was done on her left leg. P.W.2/Doctor has assessed the disability of the appellant as 30%. The Tribunal has accepted the same and awarded a sum of Rs.60,000/- (Rs.2,000/- X 30%) towards disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2008 and the amount awarded by the Tribunal towards disability is proper. The appellant has not proved that she suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is correct. According to the appellant, due to the injuries, she suffered disfiguration in face, she could not do the work without help of others, she could not able to concentrate on her studies and the Tribunal has not awarded any amount towards loss of earning capacity and loss of studies. The appellant was aged 14 years at the time of accident and she was studying in Xth standard. The appellant has not produced any document to prove that she suffered disfiguration of face and she lost her studies. Therefore, the appellant is not entitled for any compensation towards loss of income, loss of studies and disfiguration of face. The appellant took treatment as in-patient in Vijaya Health Centre, Chennai, from 22.08.2008 to 28.08.2008 and subsequently, took treatment as out-patient for six months. 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.20,000/- is awarded towards attendant charges. Considering the age of the appellant and nature of injuries sustained by her, she would have suffered more pain. Therefore, a sum of Rs.15,000/- awarded by the Tribunal towards pain & suffering is hereby enhanced to Rs.30,000/-. Similarly, a sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is meagre and the same is hereby enhanced to Rs.30,000/-. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. A sum of Rs.20,000/- and Rs.1,000/- are awarded towards loss of amenities and damage to clothes respectively. 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:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	60,000	60,000	Confirmed
2.	Pain and suffering	15,000	30,000	Enhanced
3.	Transportation	5,000	5,000	Confirmed

4.	Extra nourishment	5,000	30,000	Enhanced
5.	Medical bills	4,727	4,727	Confirmed
6.	Attendant charges	-	20,000	Granted
7.	Loss of amenities	-	20,000	Granted
8.	Damage to clothes	-	1,000	Granted
	Total	89,727	1,70,727	Enhanced by Rs.81,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.89,727/- is hereby enhanced to Rs.1,70,727/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is 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 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (Insp. Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge
The Motor Accident Claims Tribunal
Thiruvallur at Poonamallee.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.1519
+1cc to Mr.J.Mahalingam, Advocate, S.R.No.1122

C.M.A.No.2390 of 2016

VBA (CO)
CS/01/02/2021