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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.413 of 2013

Muniammal

..Appellant/Petitioner

Vs.

1.B.I. Avinash

(R1 remained set exparte before the Tribunal.)

2.ICICI Lombard General Insurance Co. Ltd.,

1st Floor, Arihant Plaza,

No.84/85, Waltax Road,

Chennai 600 003.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2012, made in M.C.O.P. No.2168 of 2010, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. Prakash

for M/s. C & K Law Firm

For Respondents: Ms.R. Sreevidhya(For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 20.09.2012, made in M.C.O.P. No.2168 of 2010, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2168 of 2010, on the file of the IV Judge, Small Causes Court, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 16.02.2010.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle to pay a sum of Rs.1,43,500/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.09.2012, made in M.C.O.P. No.2168 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained multiple fractures over right leg, serious head injury, dislocation over right shoulder, besides other severe injuries. She has taken treatment as in-patient in Government Royapettah Hospital from 16.02.2010 to 09.03.2010 and underwent surgeries and continued her treatment as out-patient. The Tribunal failed to award any amount towards attendant charges. Even at the time of filing appeal, the appellant was taking treatment as out-patient. The Tribunal erred in not awarding any amount towards future medical expenses when the appellant has proved that she requires continuous treatment. Due to the injuries sustained in the accident, the appellant suffered 45% disability. The appellant examined P.W.2 Doctor and filed documents to prove the nature of injuries and disability suffered. At the time of accident, the appellant was doing building construction work and due to the injuries sustained, she is not in a position to continue her avocation. The Tribunal ought to have adopted multiplier method for granting compensation. The Tribunal failed to award any amount towards mental agony and loss of amenities. The amounts awarded by the Tribunal towards extra nourishment, pain and suffering and transportation are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2 Doctor and disability certificate issued by him, awarded compensation towards disability, adopting percentage method. The appellant failed to prove that she suffered functional disability and lost earning capacity. Hence, she is not entitled to compensation by adopting multiplier method. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

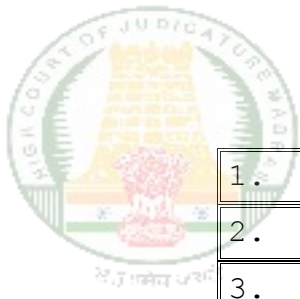


7. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

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8. From the materials on record, it is seen that it is the contention of the appellant that in the accident, she suffered multiple injuries and fracture. P.W.2 Doctor examined the appellant and certified that the appellant suffered 45% disability. The Tribunal reduced the percentage of disability to 40% on the ground that the assessment of P.W.2 Doctor is on the higher side and granted compensation towards disability at the rate of Rs.2,000/- per percentage for 40% disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant has not proved that she suffered functional disability and lost earning capacity. Hence, she is not entitled to compensation by adopting multiplier method. The 2nd respondent has not let in any evidence to disprove the evidence of PW2-Doctor and Ex.P7-disability certificate. The accident is of the year 2010. Considering the nature of injuries and disability, the appellant is entitled to compensation for 45% disability at the rate of Rs.3,000/- per percentage. Thus, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,35,000/- [Rs.3,000/- x 45%], at the rate of Rs.3,000/- per percentage for 45% disability. The appellant has taken treatment as in-patient in Government Royapettah Hospital from 16.02.2010 to 09.03.2010 and underwent surgeries. The Tribunal failed to award any amount towards attendant charges and medical expenses. Though the appellant has taken treatment at Government Hospital, she would have spent some amount towards medical expenses. Hence, a sum of Rs.5,000/- is awarded towards medical expenses and Rs.10,000/- towards attendant charges. The Tribunal has awarded meagre amount towards transportation and extra nourishment and hence, the same are enhanced to Rs.5,000/- and Rs.10,000/- respectively. The Tribunal failed to award any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- is awarded towards loss of amenities. The amount 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



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1.	Loss of income	22,500/-	22,500/-	Confirmed
2.	Transportation	3,000/-	5,000/-	Enhanced
3.	Extra nourishment	7,000/-	10,000/-	Enhanced
4.	Damage to clothing	1,000/-	1,000/-	Confirmed
5.	Medical expenses	-	5,000/-	Granted
6.	Attendant charges	-	10,000/-	Granted
7.	Pain and sufferings	30,000/-	30,000/-	Confirmed
8.	Permanent disability	80,000/-	1,35,000/-	Enhanced
9.	Loss of amenities	-	10,000/-	Granted
	Total	1,43,500/-	2,28,500/-	Enhanced by Rs.85,000/-

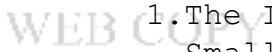
9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,43,500/- is enhanced to Rs.2,28,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.2168 of 2010 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

s/d-

Assistant Registrar(CS VIII)

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Sub-Assistant Registrar



1. The IV Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1 Cc to M/s. C & K Law Firm, Advocate sr 41629
+1 CC to Ms.R. Sreevidhya, Advocate sr 42057.

GP (CO)
SP (24/08/2021)