

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:p

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 732 of 2020

R. Indrani

.. Appellant/Petitioner

Vs.

1.S. Sumathi

2.The Regional Manager,
Reliance General Insurance Co. Ltd.,
Riase Towers, 2nd Floor, No. 2054,
2nd Avenue, Near GRP Jewellery,
Anna Nagar, Chennai 600 040. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 31.01.2017, made in M.C.O.P. No. 812 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant : Mrs. Ramya V. Rao

For Respondents: Ms. C. Bhuvanasundari (for R2)

R1- : set exparte before the Tribunal

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 31.01.2017, made in M.C.O.P. No. 812 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.By consent of both the parties, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant-claimant filed M.C.O.P. No. 812 of 2015, on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.12.2014.

4.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 vehicle to pay a sum of Rs.93,065/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 31.01.2017, made in M.C.O.P. No. 812 of 2015, the appellant has come out with the present appeal.

6.Learned counsel appearing for the appellant contended that in the accident the appellant sustained closed bimalleolar ankle PP right great toe, left orbital injury, and other severe injuries and has taken treatment as in-patient in Pondy Surgical Centre, Pondicherry from 29.12.2014 to 04.01.2015 and undergone surgery on 30.12.2014. The Medical Board has assessed the percentage of disability suffered by the appellant as 3%. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability, instead of awarding meagre amount of Rs.3,000/- per percentage for 3% disability. At the time of accident, the appellant was working as a Flower Merchant. The Tribunal ought to have awarded compensation towards loss of income, since she sustained fracture on her toe in the accident. The Tribunal has not awarded any amount towards loss of amenities and attendant charges. The total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the appellant did not suffer any functional disability, rightly applied percentage method in awarding compensation towards disability. The appellant having failed to prove her avocation and income, is not entitled to compensation towards loss of income. In any event, the total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

9.It is the contention of the appellant that in the accident, she suffered severe injuries and fracture on her toe and has taken treatment as in-patient in Pondy Surgical Centre, Pondicherry from 29.12.2014 to 04.01.2015 and undergone surgery on 30.12.2014. The Medical Board has assessed the percentage of

disability suffered by the appellant as 3% and issued disability certificate, marked as Ex.C1. The appellant has not proved that she sustained functional disability due to the injuries sustained in the accident and hence, she is not entitled to compensation by multiplier method. Hence, the Tribunal has awarded a sum of Rs.9,000/- towards disability at the rate of Rs.3,000/- per percentage for 3% disability. 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 raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.12,000/- [Rs.4,000/- x 3% disability]. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant and the surgery undergone by her, sum of Rs.15,000/- and Rs.10,000/- are awarded towards attendant charges and loss of amenities respectively. Considering the nature of injuries, the amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.15,000/-.

10. The appellant has contended that at the time of accident, she was a Flower Merchant and was earning a sum of Rs.7,500/- per month. She has not proved the same. The Tribunal has not awarded any amount towards loss of income. The accident is of the year 2014. Considering the year of accident and the nature of work, this Court fixes a sum of Rs.7,500/- per month as notional income of the appellant. Due to the injuries sustained in the accident, she would not have worked at least for a period of 3 months. Hence, a sum of Rs.22,500/- [Rs.7,500/- x 3 months] is awarded towards loss of income for a period of 3 months. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	9,000/-	12,000/-	Enhanced
2.	Pain and suffering	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	5,000/-	15,000/-	Enhanced
4.	Attendant charges	-	15,000/-	Granted
5.	Transport expenses	10,000/-	10,000/-	Confirmed
6.	Loss of income	-	22,500/-	Granted
7.	Loss of amenities	-	10,000/-	Granted
8.	Damage to clothes	5,000/-	5,000/-	Confirmed
9.	Medical expenses	39,065/-	39,065/-	Confirmed
	Total	93,065/-	1,53,565/-	Enhanced by Rs.60,500/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.93,065/- is enhanced to Rs.1,53,565/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, together 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. 812 of 2015. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.60,500/-. It is made clear that the appellant is not entitled to any interest for the delay period on the amount of Rs.60,500/-, enhanced by this Court as per the order of this Court dated 18.02.2020, made in C.M.P. No. 2419 of 2020 in C.M.A. SR. 13182 of 2020. No costs.

-Sd/-

Asst.Registrar (CS IX)

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Sub Asst. Registrar

gsa

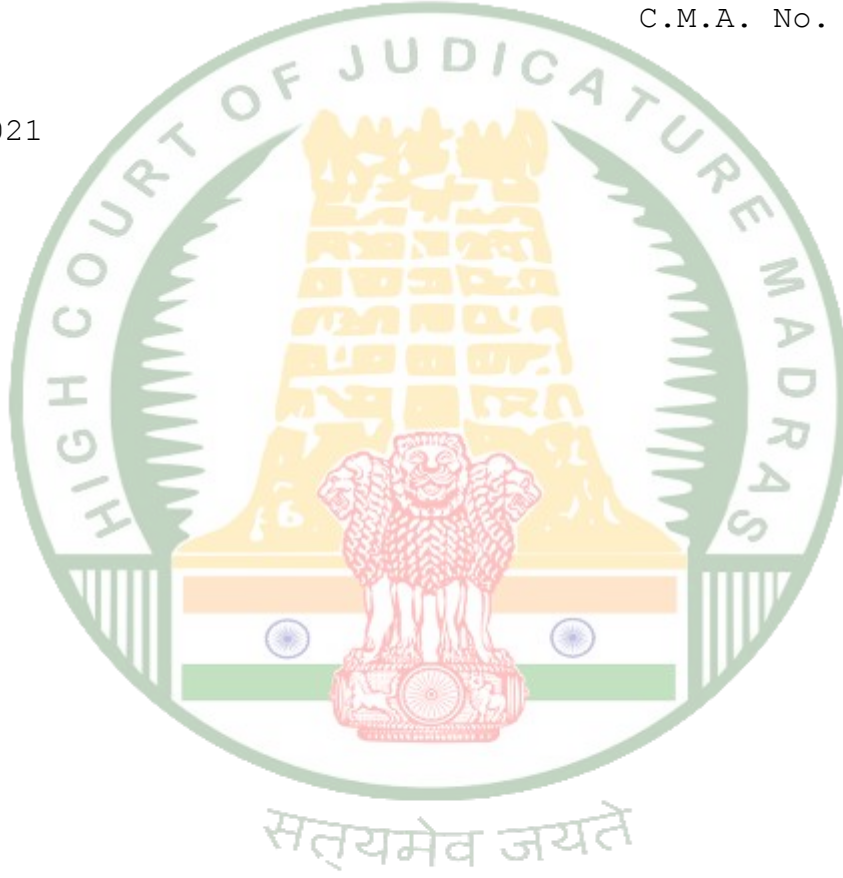
To

1.Motor Accident Claims Tribunal
The Special Subordinate Judge,
Cuddalore.

+2 ccs to M/s.A.N.Viswanatha Rao Advocate sr17127/2020

C.M.A. No. 732 of 2020

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