

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 886 of 2013

S.Parvathy

.... Appellant/Claimant

versus

1. M.Balamurugan

2. National Insurance Company Limited,
No.37, Pantheon Road,
Egmore, Chennai-8.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to allow the claim in MCOP. No.2110 of 2011, dated 08.08.2012, on the file of Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar - R2
R1 - Exparte

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 08.08.2012 in MCOP. No.2110 of 2011 passed by the Motor Accident Claims Tribunal, (VI Judge), Court of Small Causes, Chennai.

Brief facts leading to the filing of this Appeal:

2. On 11.04.2011, at about 15.20 hours, when the appellant/claimant was waiting for bus at Rajaji Salai opposite to go to Tondiarpet, at that time, a share Auto bearing Registration No.TN 04 T 9711 came from south to North direction and hit against the appellant. As a result of the said accident, the appellant sustained injuries. According to the appellant, the accident happened only due to the rash and negligent driving by the driver of the share auto bearing Registration No.TN 04 T 9711, which is owned by the first respondent and insured with the second respondent/Insurance Company.

3. The claimant preferred a claim before the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes, Chennai in MCOP No.2110 of 2011 seeking compensation for the injuries sustained by her, as a result of the said accident.

4. By an award dated 08.08.2011 in M.C.O.P. No.2110 of 2011, the Motor Accidents Claims Tribunal, (VI Judge), Court of Small Causes, Chennai, directed the second respondent/Insurance Company to pay the appellant/claimant, a compensation of Rs.93,000/- together with interest @ 7.5.% per annum from the date of claim petition till the date of deposit, and also awarded costs.

5. The break-up details of the compensation awarded by the Claims Tribunal in favour of the appellant are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of Income	10,000/-
Transportation	5,000/-
Extra Nourishment	3,000/-
Pain and sufferings	15,000/-
Disability at 30% at Rs.2000/- per percentage	60,000/-
Total	93,000/-

6. Aggrieved by the award dated 08.08.2012, in M.C.O.P. No.2110 of 2011, this appeal has been filed by the Appellant / Claimant.

7. Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant / claimant and Mr.S.Arunkumar, learned counsel for the second respondent/Insurance Company.

8. Before the Tribunal, the appellant has been able to establish her avocation, age and the nature of injuries sustained by her, as a result of the accident caused by the vehicle owned by the first respondent and insured with the second respondent. Before the Tribunal, on the side of the appellant, eight documents were marked as Ex.P1 to Ex.P8 and three witnesses were examined viz., P.W.1 ? Mr.Manickavadivel, Record Clerk, Government Stanley Hospital, P.W.2 ? the Claimant herself and P.W.3 ? the Doctor, who examined the claimant. On

the side of the second respondent, one document was marked as Ex.R1 i.e. copy of the charge sheet and one witness was examined as R.W.1.

9. As seen from the materials and evidence available on record, it is clear that the accident has happened only due to the rash and negligent driving by the driver of the insured vehicle. The appellant was a tailor at the time of the accident. Ex.P3 viz., a copy of the tailor shop agreement proves the said fact. No contra evidence has been produced by the second respondent to disprove the avocation of the appellant.

10. Before the Tribunal, the appellant in her claim petition had claimed that she was earning a sum of Rs.10,000/- per month. However, the Tribunal, under the impugned award, has assessed the notional monthly income of the appellant on a consolidated basis at Rs.10,000/-. Admittedly, the appellant has sustained fracture in her left ankle. As a tailor, it would have been impossible for her to carry on with her regular work for a considerable period of time. Though the said claim seems to be on higher side, the Tribunal has not sufficiently compensated the appellant towards loss of income for the period during which she would have been unable to carry on with her avocation as a tailor. The Tribunal ought not to have awarded a meagre sum of Rs.10,000/- to the appellant on consolidated basis, instead it ought to have assessed the same on monthly basis for a particular period.

11. This Court is of the view that due to the injuries sustained, the appellant would have been unable to work for a minimum period of six months, and as observed earlier, since the claimant claimed that she was earning a sum of Rs.10,000/- per month at the time of the accident, which is on the higher side, this Court, considering the year of accident, i.e. 2010, the monthly income of the appellant is fixed at Rs.6,500/-. Accordingly, for the period of six months, when the appellant would not have been able to carry on with her regular work as a tailor, the compensation payable to the appellant towards loss of income for the six months period works out to Rs.39,000/- instead of Rs.10,000/- per month fixed by the Tribunal under the impugned award.

12. Even though it is the contention of the second respondent before the Tribunal that the appellant had sustained only simple injuries, the evidence available on record before the Tribunal conclusively establishes the claim of the appellant that she sustained grievous injuries.

13. Insofar as the other heads of compensation are concerned, namely transportation, extra nourishment and pain and suffering, the same are also enhanced in the following manner:-

a. As the compensation awarded by the Tribunal under the said heads is inadequate, considering the nature of injuries and the avocation of the appellant, the compensation, as regards the transportation is enhanced from Rs.5,000/- to Rs.10,000/-, Extra nourishment is enhanced from Rs.3,000/- to Rs.10,000/- and pain and sufferings is enhanced from Rs.15,000/- to Rs.25,000/-.

b. Admittedly, as seen from the Ex.P7 disability certificate, the appellant has sustained 30% disability. The Tribunal, under the impugned award, has awarded a sum of Rs.60,000/- as disability compensation to the appellant, on the calculation at the rate of Rs.2,000/- per percentage of the disability. Since the year of the accident is 2010, the disability compensation awarded by the Tribunal is low. In the considered view of this Court, the disability compensation calculated at the rate of Rs.3,000/- per percentage of disability will be a just compensation to the appellant. Accordingly, the disability compensation is enhanced from Rs.60,000/- to Rs.90,000/- by this Court.

Conclusion:

14. For the foregoing reasons, the Civil Miscellaneous Appeal is allowed in part as indicated above and the compensation awarded by the Tribunal under the impugned award is enhanced in the following manner:-

Heads	Amount awarded by this Court (Rs.)
Loss of Income	39,000/-
Transportation	10,000/-
Extra Nourishment	10,000/-
Pain and sufferings	25,000/-
Disability at 30% at Rs.3,000/- per percentage	90,000/-
Total	1,74,000/-

15. The second respondent/Insurance Company is directed to deposit the modified award amount with interest and costs, after deducting the amount, if any, already deposited, to the credit of MCOP. No.2110 of 2011, dated 08.08.2012, within a period of four weeks from the date of receipt of a copy of this Judgment.

On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the claimant through RTGS within a period of two weeks thereafter.

16. In the result, the Civil Miscellaneous Appeal is allowed in part. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

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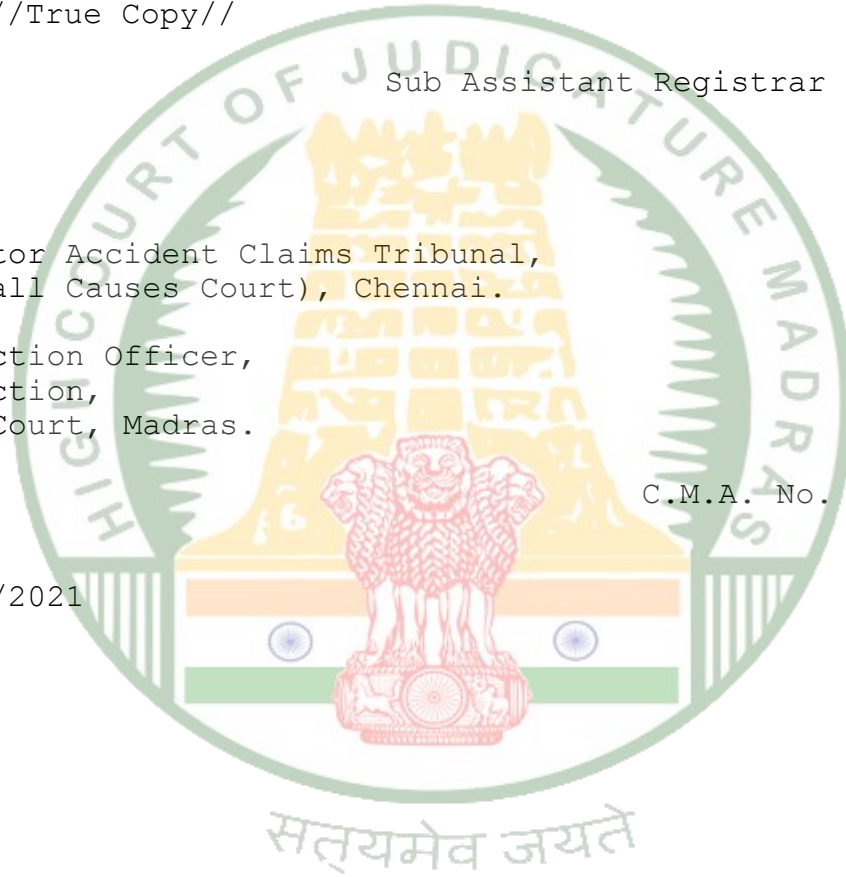
Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(VI Small Causes Court), Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A. No. 886 of 2013

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