

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.633 of 2016

Anitha .. Appellant/ Petitioner

Vs.

1. Parthiban
(Since R1 remained exparte before the Tribunal
his presence may be dispensed with)
2. ICICI Lombard General Insurance Co. Ltd.,
No.84/85, 1st Floor,
Arahind Plaza, Walltax 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 30.04.2015 made in M.C.O.P.No.607 of 2011, on the file of Motor Accident Claims Tribunal, (Subordinate Court), Ponneri.

For Appellant : Mrs.A.Subadra
For M/s.M.Malar
For R1 : Exparte
For R2 : Mrs.R.Sreevidhya

J U D G M E N T

The quantum of compensation is sought to be enhanced in the present appeal. The Tribunal granted a sum of Rs.9,75,000/- as compensation for the injuries sustained by the appellant/claimant.

2. The accident occurred on 09.09.2011 at about 14.00 hours near M.G.R. Road & Village Road Junction, Chennai. The claimant was riding a two wheeler bearing Registration No.TN-04-U-8760. On account of the accident, the appellant/claimant sustained grievous injuries. The appellant had undergone surgery for fracture. She was admitted as in patient. The Doctor assessed the partial permanent disability as 85%. The Tribunal has taken the partial permanent disability as 75% for the purpose of fixing the compensation. The nature of the injuries sustained as per Ex.P7-Discharge summary issued by

Global Hospitals & Health City are Bilateral Sacro Iliac Joint Disruption (Right & left) with Fracture Sacrum right zone I & II, Bilateral superior and interior public Rami fracture, Lateral Vaginal Wall Tear (2 cms), Abrasions over the abdomen, Right Forearm, Right Foot Dorsum, Deep Abrasion on left Buttock for which she was treated as in-patient from 09.09.2011 to 15.10.2011.

3. The evidence of P.W.2-Doctor says that the appellant/claimant cannot lift any heavy goods and she had undergone surgery and this will have some implications for her normal family life including marital life. Accordingly, the partial permanent disability assessed as 85% by the Doctor. However, the Tribunal arrived a conclusion that the assessment of 85% assessed by the Doctor is excess and accordingly fixed partial permanent disability as 75%.

4. This Court do not find any infirmity or otherwise in respect of disability fixed by the Tribunal. However, even in the claim petition it is stated that the claimant was doing samiyana business, therefore she was having the monthly income about Rs.20,000/-. This being the pleadings, the learned counsel on behalf of the appellant reiterated that the quantum of compensation fixed under the head of disability is inadequate, which is to be increased.

5. This apart, the appellant was taking treatment continuously for more than three months and the loss of income fixed for three months is also lesser than that of the fair compensation and accordingly, the monthly income is to be enhanced and the period to be calculated to arrive loss of income is also to be increased. Accordingly, this Court is of the considered opinion that the award passed by the Tribunal is to be modified by enhancing the amount in certain head and the details of enhancement is as below:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income (Rs.7500 x 10 months)	13,500/-	75,000/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra Nourishment	5,000/-	15,000/-	Enhanced
4.	Medical Expenses	4,91,909/-	4,91,909/-	Confirmed
5.	Attender Charges	5,000/-	15,000/-	Enhanced
6.	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
7.	Loss of amenities	1,00,000/-	1,00,000/-	Confirmed
8.	Loss of Income Expectation	1,00,000/-	1,00,000/-	Confirmed

9.	Disability (75% x Rs.3000/-)	1,50,000/-	2,25,000/-	Enhanced
	Total	9,75,409/-	11,31,909/-	Enhanced to Rs.11,31,909/-

6. The appellant/claimant is entitled for a total compensation of Rs.11,31,909/-. Therefore, the second respondent/Insurance company is directed to deposit the entire award amount including the enhanced amount along with interest at the rate of 7.5% per annum, if not already deposited, within a period of six weeks from the date of receipt of copy of this judgment and on such deposit, the claimant is permitted to withdraw the said amount by filing appropriate application and the payments are to be made only through RTGS.

7. The appellant/claimant is directed to pay Court fee, if any. Thus the Judgment and Decree dated 30.04.2015 passed in M.C.O.P.No.607 of 2011 is modified and C.M.A.No.633 of 2016 stands allowed in part. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Subordinate Judge,
(Subordinate Court-cum-Motor Accidents Claims Tribunal),
Ponneri.

2.The Section Officer,
V.R Section,
High Court, Madras.

1 cc to M/s. R. Sreevidhya, Advocate, Sr. 23247

1 cc to M/s.M.Malar, Advocate, Sr. 22942

C.M.A.No.633 of 2016

SAI (CO)
kk 17/12