

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.597 of 2020

Sudha

.. Appellant/Petitioner

Vs.

1.Dhakshinamoorthy

2.TheUnited India Insurance Company Limited,
1170, Muthaiya Complex, Mettur Road,
Erode - 638 011. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.11.2019 made in M.C.O.P.No.383 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Ms.I.Malar

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 18.11.2019 made in M.C.O.P.No.383 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.383 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 08.09.2016.

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- Insurance Company, being the insurer of the motorcycle to pay a

sum of Rs.1,35,801/- as compensation to the appellant.

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 contended that in the accident the appellant sustained grievous head injuries and fracture of Left side frontal bone SAH. At the time of accident the appellant was aged 33 years and was working as Helper (Labour worker) in M/s. Card Board Company, Lingathakuttai at Modakurichi and was earning a sum of Rs.14,000/- per month. Due to the injuries sustained by her in the accident, she could not able to do her work as she was doing earlier and she lost her entire earning power and the Tribunal ought to have awarded compensation towards loss of earning capacity. The compensation awarded by the Tribunal towards loss of income is very meagre. The Tribunal has not awarded any amount towards loss of amenities. 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 in the absence of any material evidence with regard to the avocation and income, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant has not proved that she lost her earning capacity and hence, she is not entitled to any amount towards loss of earning capacity and loss of amenities. The amounts awarded by the Tribunal under different heads are not meagre 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-Insurance Company and perused the entire materials on record.

8. From the award passed by the Tribunal, it is seen that in the accident, the appellant sustained grievous head injuries and fracture of Left side frontal bone SAH. It is the contention of the appellant that she was aged 33 years and was working as Helper (Labour worker) in M/s. Card Board Company, Lingathakuttai at Modakurichi and was earning a sum of Rs.14,000/- per month. The appellant failed to prove the said contention. In the absence of any material evidence with regard to her avocation and income, the Tribunal fixed a sum of Rs.8,000/- per month as notional income and awarded a sum of Rs.32,000/- towards loss of income for four months. The accident occurred in the year 2016 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by her in the accident, she would not have attended her work at least for a

period of six months. Therefore, the compensation awarded by the Tribunal towards loss of income is modified to Rs.72,000/- (Rs.12,000/- X 6 months). The appellant has not proved that she lost her earning capacity. Therefore, she is not entitled to any amounts towards loss of earning capacity and loss of amenities.

9.From the materials available on record, it is seen that the appellant has taken treatment as in-patient at Government Head Quarters Hospital, Erode from 08.09.2016 to 10.09.2016 and also at Trust Hospital, Erode from 10.09.2016 to 21.09.2016. Considering the nature of injuries and period of treatment taken by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and the same is enhanced to Rs.20,000/-. The amounts awarded by the Tribunal towards medical expenses, pain and sufferings, attendant charges and transportation are just and reasonable and hence, the same are 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
1.	Loss of income	32,000/-	72,000/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Attendant charges	20,000/-	20,000/-	Confirmed
4.	Extra nourishment	10,000/-	20,000/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Medical expenses	13,801/-	13,801/-	Confirmed
	Total	Rs.1,35,801/-	Rs.1,85,801/-	enhanced by Rs.50,000/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,35,801/- is hereby enhanced to Rs.1,85,801/- 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 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, to the credit of M.C.O.P.No.383 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. On such deposit, the appellant is permitted to withdraw the enhanced award amount now

determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.T.Ravichandran, Advocate SR.No.14095

C.M.A.No.597 of 2020

PP (CO)
GMY (06/11/2020)

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