

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 707 of 2020

Sundarambal

.. Appellant /Petitioner

Vs.

1.Harishkumar

2.Santhiyappan

3.The United India Insurance Co. Ltd.,
Divisional office HUB Ranga Building,
Peramanur Main Road,
Peramanur, Salem 636 007.

4.The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
12, Ramakrishna Road,
Salem 636 007.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 07.12.2019, made in M.C.O.P. No. 1409 of 2016, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mr. T.S. Arthanareeswaran

For Respondents : Mr. J. Chandran (for R3)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 07.12.2019, made in M.C.O.P. No. 1409 of 2016, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Salem.

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. 1409 of 2016, on the file of the Special Sub Court No. II, (Motor Accident Claims Tribunal), Salem, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident

that took place on 14.12.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Tipper Lorry and directed the 3rd respondent as insurer of the vehicle to pay a sum of Rs.1,78,735/- as compensation to the appellant and dismissed the claim petition as against the respondents 2 and 4.

5.Not being satisfied with the amounts awarded by the Tribunal in the award dated 07.12.2019, made in M.C.O.P. No. 1409 of 2016, the appellant has come out with the present appeal.

6.Learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and fractures and has taken first aid treatment at Government Mohan Kumaramangalam Medical College Hospital at Salem and subsequently, has taken treatment at Trust Hospital, Erode from 15.12.2015 to 22.12.2015. The Medical Board has assessed that the appellant suffered 10% permanent disability and issued disability certificate marked as Ex.C1. At the time of accident, the appellant was owning a Power Loom and was earning a sum of Rs.12,000/- per month. The Tribunal without considering the nature of injuries and pain and suffering of the appellant, granted only meagre amount as compensation under the heads, loss of income, pain and suffering and attendant charges. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of the compensation.

7.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the Tribunal considering all the materials on record in proper perspective, awarded compensation, which is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the 3rd respondent and perused the materials available on record.

9.It is the contention of the appellant that in the accident, she suffered multiple injuries/fracture 5th MC right and fracture of lower end of radius left and took treatment as in-patient in Trust Hospital at Erode from 15.12.2015 to 22.12.2015. The Medical Board has assessed that the appellant suffered 10% permanent disability and issued disability certificate, marked as Ex.C1. The Tribunal has awarded a sum of

Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage for 10% disability and the same is meagre. 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 2015. 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.40,000/- [10% disability x Rs.4,000/-]. Considering the period of treatment taken by the appellant, the sum of Rs.5,000/- and Rs.15,000/- awarded by the Tribunal towards attendant charges and pain and suffering are meagre and hence, the same are enhanced to Rs.15,000/- and Rs.20,000/- respectively.

10. According to the appellant, at the time of accident, he was doing Power Loom business and was earning a sum of Rs.20,000/- per month. She has failed to substantiate the same. In the absence of any material evidence to prove her avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- per month is fixed as the notional income of the appellant. Due to the injuries sustained in the accident, the appellant would not have worked for atleast 6 months. Hence, the amount granted by the Tribunal towards loss of income is enhanced to Rs.60,000/- [Rs.10,000/- x 6 months]. The amount awarded by the Tribunal under other heads 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.	Disability	30,000/-	40,000/-	Enhanced
2.	Pain and suffering	15,000/-	20,000/-	Enhanced
3.	Loss of amenities	15,000/-	15,000/-	Confirmed
4.	Medical expenses	32,735/-	32,735/-	Confirmed
5.	Loss of income	45,000/-	60,000/-	Enhanced

6.	Transport expenses	15,000/-	15,000/-	Confirmed
7.	Extra nourishment	20,000/-	20,000/-	Confirmed
8.	Attendant charges	5,000/-	15,000/-	Enhanced
9.	Damage to clothes	1,000/-	1,000/-	Confirmed
	Total	1,78,735/-	2,18,735/-	Enhanced by Rs.40,000/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,78,735/- is enhanced to Rs.2,18,735/- along with interest and costs. The 3rd respondent-Insurance Company is directed to deposit the enhanced 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. 1409 of 2016. 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.40,000/-. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Motor Accidents Claims Tribunal,
The II Judge, Special Sub Court,
Salem.

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

+2cc to Mr.C.Paraneedharan, Advocate, S.R.No. 17328

C.M.A. No. 707 of 2020

GJ(CO)

GN(05/01/2021)