

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2027 of 2018

K.R. Vallikkannu

.. Appellant/Claimant

Vs.

1.Irudhaya Raj Ramesh

2.Universal Sompo General Insurance Co. Ltd.,
No. 554/555, Capital Tower 5th Floor,
B - Wing, Teynampet,
Annasalai,
Chennai 600 018.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 12.12.2013, made in M.C.O.P. No. 1429 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents: Mrs. R. Sree Vidhya (For R2)

J U D G M E N T

This appeal has been filed seeking enhancement of the compensation granted by the award dated 12.12.2013, made in M.C.O.P. No. 1429 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the claimant in M.C.O.P. No. 1429 of 2011, on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai. She filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.11.2010.

3.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 Auto and directed the 2nd respondent, as insurer of

the vehicle, to pay a sum of Rs.1,50,000/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 12.12.2013, made in M.C.O.P. No. 1429 of 2011, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the appellant was working as a Clerk in Canara Bank, Gopalapuram Branch, Chennai and was earning a sum of Rs.37,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- per month and awarded compensation for loss of income, only for two months. The Tribunal ought to have awarded compensation towards loss of income for three months, at the rate of Rs.37,000/- per month. Due to the accident, the appellant suffered grievous injuries. P.W.3 - Doctor has assessed that the appellant suffered 40% disability and issued Ex.P16 - Disability Certificate to that effect. The Tribunal reduced the same to 25% on the ground that the disability assessed by the Doctor is on the higher side. The appellant is entitled to compensation for 40% disability. The Tribunal ought to have awarded more compensation under different heads and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that P.W.3- Doctor is not the Doctor who treated the appellant. Hence, the percentage of disability assessed by the Doctor is excessive. The Tribunal by giving valid reason, reduced the percentage of disability to 25%. The appellant has not suffered any loss of income as she availed sick leave and privilege leave. The amounts awarded under different heads are not meagre and prayed for dismissal of the appeal.

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

8. It is the contention of the appellant that she was working as Clerk in Canara Bank and was earning a sum of Rs.37,000/- per month. In the accident, she suffered grievous injuries including traumatic brain injury and fracture of right temporal bone and took treatment as in-patient in Apollo First Med Hospitals, Chennai from 17.11.2010 to 21.11.2010. Subsequently she took treatment as in-patient in the same Hospital from 26.11.2010 to 29.11.2010. She availed sick leave on half pay from 18.11.2010 to 16.12.2010 and privilege leave from 17.12.2010 to 16.12.2010. The appellant has suffered loss of income. The Tribunal has fixed monthly income of the appellant

as Rs.6,000/-, on the ground that the salary slip produced and marked as Ex.P7 is the pay slip of the year 2013, while the accident has occurred in the year 2010. The said reasoning is erroneous. The Tribunal failed to see that within 3 years, the salary would not have been increased by more than 6 times. In view of the same, the income of the appellant is fixed at Rs.30,000/- per month and the appellant is entitled to compensation for loss of income for three months at the rate of Rs.30,000/-. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.90,000/- (Rs.30,000/- x 3 months).

8(a) From the materials on record, it is seen that P.W.3 - Doctor assessed disability of the appellant as 40% and deposed that appellant suffered partial permanent disability. There is no contra evidence to disprove the evidence of P.W.3- Doctor. The Tribunal erroneously reduced the percentage of disability suffered by the appellant from 40% to 25%. The reason given by the Tribunal for reducing the same is not correct. Considering the nature of injuries, period of treatment taken and the disability certificate, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- [40% x Rs.3,000/-]. The Tribunal has erroneously granted a lumpsum amount of Rs.27,000/- towards transportation, extra nourishment and damages to clothes. The same is meagre and hence, modified as, a sum of Rs.10,000/- towards transportation, Rs.20,000/- towards extra nourishment and Rs.2,000/- towards damages to clothes. The amounts awarded by the Tribunal towards pain and suffering, attendant charges and loss of amenities are also meagre. Considering the nature of injuries and period of treatment taken, the amounts awarded by the Tribunal are enhanced to Rs.50,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities and Rs.15,000/- towards attendant charges. The amounts 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.	Loss of income	12,000/-	90,000/-	Enhanced
2.	Transportation, extra nourishment & damages to clothes	27,000/-	10,000/- 20,000/- 2,000/-	Enhanced

3.	Medical expenses	1,000/-	1,000/-	Confirmed
4.	Attendant charges	5,000/-	15,000/-	Enhanced
5.	Disability	50,000/-	1,20,000/-	Enhanced
6.	Loss of amenities	25,000/-	30,000/-	Enhanced
7.	Pain and suffering	30,000/-	50,000/-	Enhanced
	Total	1,50,000/-	3,38,000/-	Enhanced by Rs.1,88,000/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,50,000/- is enhanced to Rs.3,38,000/- along with interest and costs. The 2nd respondent 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. 1429 of 2011. 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. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,88,000/-, enhanced by this Court as per the order of this Court dated 03.09.2018, made in C.M.P. No. 1687 of 2017 in C.M.A. SR. No. 94597 of 2016. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.1,88,000/-. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The VI Small Causes Judge,
(Motor Accident Claims Tribunal),
Chennai.

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

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+1cc to Mr.R.K.Sethuraman, Advocate, S.R.No.6305
+1cc to Mr.K.V.Muthu Visakan, Advocate, S.R.No.5071

C.M.A. No. 2027 of 2018

GP (CO)
CB(21/04/2021)



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