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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No. 2816 of 2019

Agilavalli Thirumalai,
W/o. Thirumalai,
No.G-1. Madhuran Apartments,
No.25/13, Postal Colony,
2nd Street,
West Mambalam,
Chennai-600 033.

... Appellant /Petitioner

Vs.

1. M.Arul,
New No.443/3, Yadhavar Street,
Perunagar Village and Post,
Uthiramerur,
Kancheepuram District.

2. IFFCO-TOKIO General Insurance Co., Ltd.,
No.28, (Old No.195) II Floor,
North Usman Road, T.Nagar,
Chennai-600 017.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the judgment and decree in M.C.O.P. No.4571 of 2012, dated 17.04.2018 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : R1 - No appearance
Mrs.K.Saraswathi
for R2

J U D G M E N T

The claimant is the appellant in this appeal, seeking enhancement of compensation.



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2. The case of the claimant before the Tribunal is that, on 13.09.2012 at about 07.15 p.m., while the appellant/claimant was riding in her two wheeler bearing Regn. No.TN-09-AP-5697, a car belong to the 1st respondent with Regn. No.TN-01-T-0724 came in rash and negligent manner and dashed against the appellant and the appellant sustained serious injury all over the body, including a fracture. She was given first-aid at Pallava Hospital, thereafter, she was admitted at Vijaya Health Centre, Chennai, and taken treatment till 01.10.2012. Again, she was admitted on 25.10.2012 and till 05.11.2012 taken treatment. In the said accident, the appellant suffered 85% disability. The appellant was working in the office of the Principal Accountant General, Chennai, as Assistant Accountant Officer. Due to the accident, she was not able to discharge her duties as before the accident. That apart, she has also incurred huge medical expenses and need further medical treatment. Hence, claiming a sum of Rs.24 lakhs as compensation, the claim petition has been filed.

3. The 1st respondent/owner of the vehicle remained exparte and the second respondent Insurance Company contested the claim petition stating that the accident was taken place due to the rash and negligent driving of the appellant/claimant. The offending vehicle is a tourist car, and the driver did not have a endorsement in the driving license to drive the tourist vehicle, which is a violation of insurance policy conditions, and hence, the respondent Insurance Company is not liable to pay any compensation. That apart, the appellant did not suffer any permanent disability, and the appellant suffered only minor injuries. Hence, the compensation claimed by the appellant is highly excessive and there is no reason to interfere with the order of the Tribunal.

4. In order to prove his claim, the Appellant/claimant examined herself as P.W.1 and the Doctor was examined as P.W.2 and marked as many as 20 exhibits. On the side of the respondents, two witnesses were examined, and marked as many as 5 exhibits.

5. The Tribunal, after considering both the oral and documentary evidence, has come to the conclusion that the accident was taken place due to the rash and negligent driving of the driver of the car. So far as the endorsement in the driving license, the Tribunal considering the judgment of Hon'ble Supreme Court of India, in Divisional Controller, Karnataka State Road Transport Corporation /Vs/ Mahadev Shetty reported in 2003 ACJ 1775 SC, fixed the



liability on the insurance company and awarded the compensation as follows :-

(1)	Towards transportation and nourishing food	Rs. 20,000/-
(2)	Attender charges	Rs. 18,000/-
(3)	Medical expenses	Rs. 1,43,404/-
(4)	Future Medical expenses	Rs. 2,50,000/-
(5)	Disability	Rs. 1,80,000/-
(6)	Loss of earning	Rs. 3,60,096/-
(7)	Damages for pain, suffering and trauma	Rs. 1,00,000/-
(8)	Loss of amenities	Rs. 1,00,000/-
	Total	Rs.11,71,500/-

Not being satisfied with the compensation awarded by the Tribunal, the appellant/claimant is before this Court with this appeal.

6. The learned counsel appearing for appellant would submit that the appellant had suffered 85% permanent disability, and being a Government employee, she is not able to discharge her regular duties. However, the Tribunal without applying the multiplier method, had awarded a sum of Rs.1,80,000/- towards disability. That apart, the appellant was admitted in the hospital several times for treatment and towards attender charges, only a sum of Rs.18,000/- was awarded by the Tribunal. She was bedridden for a long time, and for the injury suffered by her, only a sum of Rs.1 lakh has been awarded by the Tribunal and towards loss of amenities also, the Tribunal awarded only a sum of Rs.1 lakh. Hence, she has sought for enhancement of compensation.

7. The learned counsel appearing for 2nd respondent insurance company vehemently contended that even though the Doctor had assessed the disability at 85%, it is not a permanent disability, and being a Government employee, after treatment, she was able to attend the office, discharging her duties, and getting regular salary, she was not disabled from earning her livelihood. Hence, there is no loss of future earning. In the above circumstances, the Tribunal has rightly granted compensation of Rs.1,80,000/- towards disability treating the disability as a partial permanent disability. In respect of other heads also, the Tribunal has rightly awarded fair compensation and there is



no reason to interfere with the order passed by the Tribunal.

8. I have considered the rival submissions made by the learned counsel appearing for appellant and the learned counsel appearing for 2nd respondent and perused the materials available on record.

9. The appellant/claimant was working as an Assistant in the Principal Accountant General Office at Chennai. In the accident, she has sustained the following injuries :-

"1) compound comminuted fracture distal humerus left, 2) compound comminuted fracture both bone distal 3rd left leg, Hypothyroidism, Osteoporosis."

It is reflected in the discharge summary issued by the hospital. From the materials available on record, it could be seen that she was admitted in the hospital four times for treatment. After recovery, admittedly, she continues to work in the same office and getting regular salary. The Tribunal assessed the disability at 60%, based on the certificate issued by the medical board, stating that it is not a functional disability. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, which is likely to remain for the remainder life of the injured person. The temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. In the instant case, admittedly, after treatment and recovery, the appellant continue to discharge her duties and there is no loss of any future earning, and she is also able to discharge her duties and there is no reduce of her earning capacity. Hence, this is not a fit case for applying multiplier method. The Tribunal after ascertaining the disability, has rightly awarded a sum of Rs.1,80,000/- towards disability and another sum of Rs.3,60,096/- granted towards loss of earning as she was bedridden for a long period. Therefore, this Court does not find any reason to interfere with the compensation awarded by the Tribunal on that heads.

10. So far as other remaining heads are concerned, towards transportation and nourishing food, the Tribunal has only awarded a sum of Rs.20,000/-, whereas, the appellant was admitted in the hospital for four times and taken treatment for more than one month in the hospital. Since she is a lady and suffered a fractures, she requires nourishing food. Hence, a sum of Rs.20,000/- would be a just compensation on that head. Towards attender charges,



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she was taken treatment for a long time, hence, a sum of Rs.50,000/- can be awarded on that head. For pain and suffering, considering number of surgeries undergone by the appellant, a sum of Rs.1,50,000/- can be awarded instead of Rs.1,00,000/- awarded by the Tribunal. For loss of amenities, as being a Government employee, she has suffered severe and continued to take treatment, and it affected her to some extent, an additional sum of Rs.50,000/- can be granted instead of a sum of Rs.1 lakh awarded by the Tribunal. In the said circumstances, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Towards transportation and nourishing food	20,000	50,000	enhanced
2	Attender charges	18000	50,000	enhanced
3	Medical expenses	1,43,404	1,43,404	confirmed
4	Future Medical expenses	2,50,000	2,50,000	confirmed
5	Disability	1,80,000	1,80,000	confirmed
6	Loss of earning	3,60,096	3,60,096	confirmed
7	Damages for pain, suffering and trauma	1,00,000	1,50,000	enhanced
8	Loss of amenities	1,00,000	1,50,000	enhanced
	Total	11,71,500	13,33,500	enhanced

Thus, the appellant is entitled to get a sum of Rs.13,33,500/- instead of Rs.11,71,500/- awarded by the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,71,500/- is hereby enhanced to Rs.13,33,500/- together with interest at the rate of 7.5% per annum till the date of deposit of amount. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. 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 eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

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To

1.The IV Judge, Court of Small Causes,
The Motor Accidents Claims Tribunal,
Additional District Court, Namakkal.

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

+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No. 36203

C.M.A.No.2816 of 2019

SVI (CO)
GN(17/08/2021)