

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-09-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2526 of 2019

C.Irudhaya Rani Mettilda .. Appellant/Claimant

vs.

1.V.Divya

2.ICICI Lombard General Insurance Co. Ltd.,
Chotabai Towers, No.140,
Nungambakkam High Road,
Chennai.
Now functioning at
ICICI Lombard General Insurance Co. Ltd.,
Harihant Plaza, 1st Floor,
No.83/84, Walltax Road,
Chennai-600 003. .. Respondents/ Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2019 passed in M.C.O.P. No.3232 of 2015 on the file of the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.K.Suriya Narayanan for
Ms.P.T,.Saleem Fathima

For Respondent-1 : Ex parte

For Respondent-2 : Mr.K.Poomalai

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J U D G M E N T

The judgment and decree dated 07.02.2019 passed in M.C.O.P. No.3232 of 2015 by the learned III Judge, Small Causes Court -cum-Motor Accidents Claims Tribunal, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant, who is the appellant herein, filed the present Civil Miscellaneous Appeal, seeking enhancement of compensation.

3. The accident occurred on 21.03.2015 at about 12.30 Hours at the Junction of 100 Feet Jawaharlal Road and Periyar Pathai, Chennai. The Anna Nagar Traffic Investigation registered a case in Crime No.120/AS.3/2015.

4. The appellant-claimant was a pillion rider in a motorcycle bearing Registration No.TN-03-P-6100 and was travelling from Ennore to Tharamani at Chennai. Due to the accident, the appellant-claimant sustained multiple fractures and nerve injuries in Spinal Cord leading to impairment of movements and sensation of both lower limbs.

5. The claim petition was filed by the appellant-claimant and the second respondent/Insurance Company defended the claim petition.

6. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced.

7. As far as the negligence aspect is concerned, the Tribunal arrived a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing Registration No.TN-22-CK-3085, which belongs to the first respondent. Thus, the negligence was fixed on the first respondent and consequently, the Tribunal directed the second respondent-Insurance Company to pay compensation to the appellant-claimant. As far as the quantum of compensation is concerned, the Tribunal granted a sum of Rs.1,09,200/- as total compensation.

8. The learned counsel appearing on behalf of the appellant-claimant made a submission that the quantum of compensation granted by the Tribunal is inadequate and is not in commensuration with the gravity of the grievous injuries sustained by the appellant-claimant.

9. The learned counsel appearing on behalf of the appellant-claimant solicited the attention of this Court regarding the nature of injuries sustained by the appellant-claimant and the disability caused to the appellant-claimant due to the accident. The appellant-claimant sustained grievous injuries and she is unable to perform her normal routine duties. The Doctor assessed the disability as 25% and the Tribunal has taken only 15% towards disability. This apart, the Tribunal fixed a sum of Rs.3,000/- per percentage for disability and granted a sum of Rs.45,000/- towards disability compensation.

10. It is contended that the accident occurred in the year 2015 and therefore, the grant of a sum of Rs.3,000/- per percentage is on the lower side. This apart, the appellant-claimant is working as a Financial Associate in H.P.Ranau Jain IT.City, Tharamani, Chennai. At the time of accident, she was aged about 23 years and was working as Financial Associate in the IT Company. Therefore, the Tribunal ought to have granted more compensation towards loss of income. The Tribunal has fixed the monthly salary of the appellant-claimant as Rs.14,400/-. However, one month salary alone is granted towards loss of income. In fact, the appellant-claimant has taken treatment continuously for more than a month.

11. The learned counsel appearing on behalf of the second respondent-Insurance Company disputed the contentions of the learned counsel for the appellant-claimant, by stating that the injuries sustained by the appellant-claimant are not so grave, warranting enhancement of compensation. The Tribunal has considered all these aspects and reduced the percentage of disability from 25% to 15% and granted a sum of Rs.3,000/- per percentage, cannot be construed as erroneous. Thus, the award of the Tribunal is to be confirmed.

12. This Court is of the considered opinion that the appellant-claimant at the time of accident was 23 years old and she was working as Financial Associate in an IT Company and her monthly income was Rs.14,400/-. The appellant-claimant sustained multiple fractures and head injuries in Spinal Cord leading to impairment of movements and sensation of both lower limbs. The Doctor assessed the disability at 25%. However, the Tribunal, without much reasoning, had reduced the disability percentage from 25% to 15% and the reasonings are not convincing. The Tribunal ought to have considered 25% disability for the purpose of awarding compensation. This apart, one month salary alone is granted towards loss of income and the appellant-claimant would have taken treatment after her discharge from the Hospital and further she would have taken rest for some days and for that period also, she is entitled for compensation towards loss of income.

13. This being the facts and circumstances, this Court is of the considered opinion that the overall compensation granted by the Tribunal is inadequate and therefore some enhancement is to be made, considering the nature of grievous injuries suffered as well as the treatment taken by the appellant-claimant. Accordingly, the award of the Tribunal stands modified as detailed hereunder:-

	Rs.
Disability (Rs.4,000/-x25)	1,00,000/-
Pain and Sufferings	25,000/-
Extra Nourishment	5,000/-
Transportation Charges	5,000/-
Attender Charges	2,600/-
Medical Expenses	12,043/-
Future Medical Expenses	10,000/-
Loss of income (Rs.14,000/-x4)	56,000/-
Loss of Amenities	5,000/-
Total	Rs.2,20,643/-

Thus, the appellant/claimant is entitled for a total compensation of Rs.2,20,643/- with accrued interest at the rate of 7.5% per annum.

14. The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay additional court fee for the enhanced compensation, within a period of two weeks from the date of receipt of a copy of this judgment and payments are to be made through RTGS.

15. Accordingly, the judgment and decree dated 07.02.2019 passed in M.C.O.P. No.3232 of 2015 by the learned III Judge, Small Causes Court-cum-Motor Accidents Claims Tribunal, Chennai,

stands modified and consequently, CMA No.2526 of 2019 is allowed in part. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

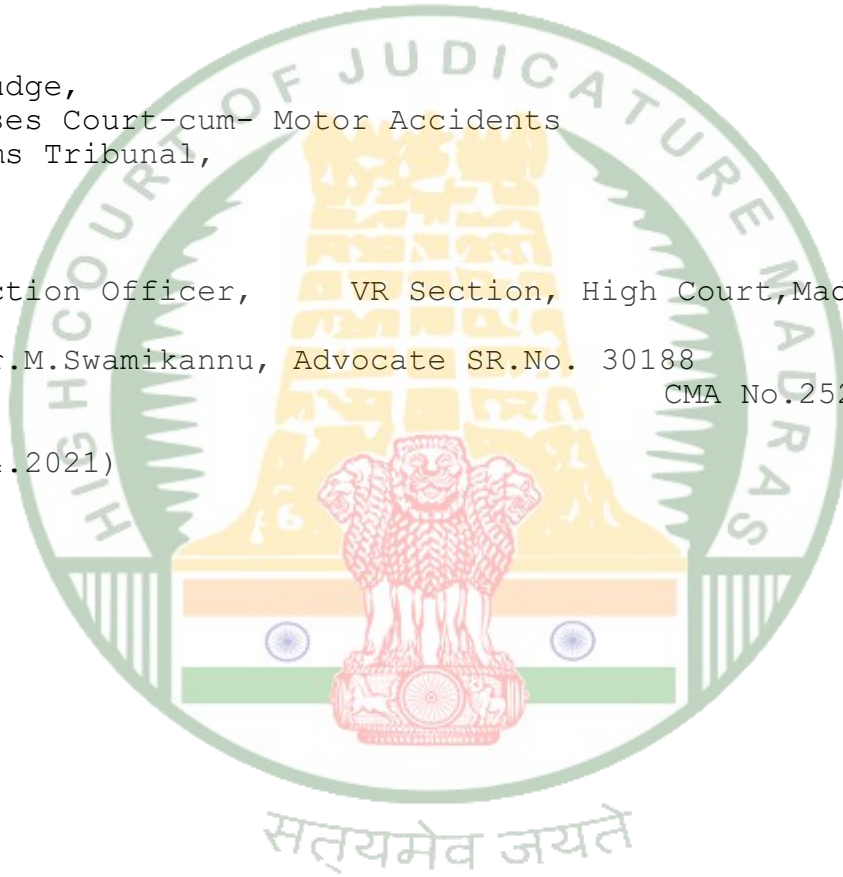
The III Judge,
Small Causes Court-cum- Motor Accidents
Claims Tribunal,
Chennai.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.M.Swamikannu, Advocate SR.No. 30188

CMA No.2526 of 2019

A.SK(27.04.2021)



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