

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3118 of 2019

B.Chitra Devi

..Appellant/Claimant

Vs.

1.M.Kaveri

2.Iffco Tokio General Insurance Company Limited,
Customer Service Centre,
ITGI Strategic Business Unit,
28, 2nd Floor, North Usman Road,
T.Nagar, Chennai - 600 017.

3.S.Jeyanthi

4.Royal Sundaram Alliance Insurance Company Limited,
TVS Co-operative Stores Buildings,
37, Krishna Rao Tank Street,
Madurai - 625 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.11.2017 made in M.C.O.P.No.1734 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.V.Balamurugan
For R2 : Mr.S.Arunkumar
For R4 : No appearance
R1 & R3 - Set 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 17.11.2017 made in M.C.O.P.No.1734 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1734 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. She filed the above 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 08.07.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.44,000/- 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 fracture of left zygoma and maxilla bones, which resulted in deformity in her face, frequent pain in her face due to muscle contraction and her movement of jaw is restricted. To prove the same, the appellant examined P.W.3/Doctor. P.W.3/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P16/disability certificate to that effect. The Tribunal without giving valid reason, reduced the percentage of disability to 5% and awarded compensation. The Tribunal ought to have awarded compensation for 40% disability. The appellant was working as Noon Meal Organiser and was earning a sum of Rs.6,000/- per month and the Tribunal has not awarded any amount towards loss of income. The amount awarded by the Tribunal towards attendant charges is meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 40% to 5% on the ground that disability assessed by P.W.3/Doctor is not permanent disability. Hence, the appellant is not entitled to compensation for 40% disability. The appellant has not proved that she lost her income due to the injuries sustained by her in the accident. Therefore, she is not entitled to any amount towards loss of income. The appellant has not made out any case for enhancement of compensation 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.It is the contention of the appellant that in the accident she sustained fracture of left zygoma and maxilla bones, which resulted in deformity in her face, frequent pain in her face due

to muscle contraction and her movement of jaw is restricted. To prove the same, the appellant examined P.W.3/Doctor. P.W.3/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P16/disability certificate to that effect. The 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of P.W.3/Doctor and Ex.P16/disability certificate. The Tribunal reduced the percentage of disability to 5% on the ground that disability assessed by P.W.3/Doctor is not permanent disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. Therefore, the appellant is entitled to compensation for 40% disability. The accident occurred in the year 2010 and the Tribunal has awarded a sum of Rs.3,000/- per percentage of disability, which is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,20,000/- [Rs.3,000/- X 40% of disability].

9.It is the contention of the appellant that she was Noon Meal Organiser and was earning a sum of Rs.6,000/- per month at the time of accident. The appellant failed to prove the same and the Tribunal has not awarded any amount towards loss of income. Considering the age, nature of work done by the appellant and year of accident, a sum of Rs.6,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by her, she would not have attended her work atleast for a period of four months. Therefore, the appellant is entitled to a sum of Rs.24,000/- [Rs.6,000/- X 4 months] towards loss of income. From the award passed by the Tribunal, it is seen that the appellant has taken treatment as in-patient in KMC Hospital. Considering the nature of injuries, the amounts awarded by the Tribunal towards transportation and extra nourishment are enhanced to Rs.10,000/- each. The Tribunal has not awarded any amount towards loss of amenities and damages to clothes. Therefore, a sum of Rs.10,000/- and Rs.1,000/- respectively are awarded towards loss of amenities and damages to clothes. The amounts awarded by the Tribunal towards pain and sufferings, attendant charges and medical bills 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	15,000/-	1,20,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Attendant charges	2,000/-	2,000/-	Confirmed
4.	Extra nourishment	5,000/-	10,000/-	Enhanced

5.	Transportation	5,000/-	10,000/-	Enhanced
6.	Medical expenses	6,800/-	6,800/-	Confirmed
7.	Loss of income	-	24,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.43,800/- rounded off to Rs.44,000/-	Rs.1,93,800/- rounded off to Rs.1,94,000/-	enhanced by Rs.1,50,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.44,000/- is hereby enhanced to Rs.1,94,000/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The 2nd respondent 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.1734 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. 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.

s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

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To

1. The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

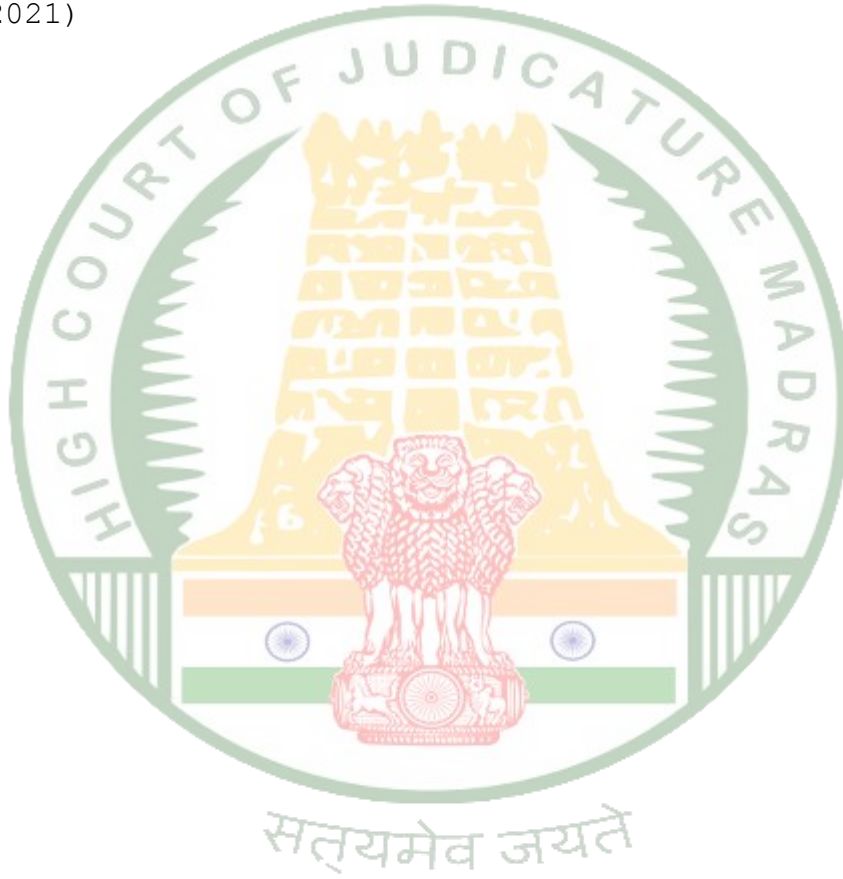
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2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.V.Balamurugan, Advocate sr 12917.

C.M.A.No.3118 of 2019

SSV(CO)
SP(20/04/2021)



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