

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2402 of 2014

Rajeshwari

.. Appellant/Petitioner

Vs.

1.Purushothaman

2.Divisional Manager,
United India Insurance Co. Ltd.,
No.46, Kadpadi Road,
Vellore.

3.Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Rangapuram, Vellore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2011, made in M.C.O.P. No.582 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Thiruvannamalai.

For Appellant : Ms. A. Subadra
for Mr.F.Terry Chella Raja

For Respondents: Mrs. I. Malar (For R2)
Mr. K.J. Sivakumar (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 19.12.2011, made in M.C.O.P. No.582 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal) Thiruvannamalai.

2.The appellant-claimant filed M.C.O.P. No.582 of 2006, on the file of the Principal Sub Court, (Motor Accident Claims

Tribunal) Thiruvannamalai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.06.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle to pay a sum of Rs.1,39,000/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the 3rd respondent-Transport Corporation.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 19.12.2011, made in M.C.O.P. No.582 of 2006, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained fracture of right humerus and grievous injuries all over the body and has taken treatment as in-patient in various private Hospitals. The Tribunal failed to consider the evidence of appellant as P.W.1 and P.W.2 Doctor and awarded only meagre amounts as compensation. The Tribunal awarded only meagre amount towards loss of income at the rate of Rs.4,000/- per month as notional income, while the appellant was earning Rs.6,000/- per month as Agricultural Coolie. The amounts awarded by the Tribunal towards pain and suffering and extra nourishment are also meagre. The Tribunal failed to award any amount towards mental agony, attendant charges, loss of amenities, damages to clothes, loss of earning capacity, transportation and medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the evidence of P.W.2 Doctor and disability certificate issued by him, reduced the percentage of disability assessed by P.W.2 Doctor to 50% and rightly awarded compensation towards disability at the rate of Rs.2,000/- per percentage for 50% disability. The accident is of the year 2005. The compensation granted towards disability is not meagre. In the absence of any material evidence produced by the appellant to prove her avocation and income, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the appellant and awarded compensation towards loss of income for a period of three months. The same is not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Mr.K.J. Sivakumar, learned counsel appearing for the 3rd respondent-Transport corporation contended that the Tribunal dismissed the claim petition against the 3rd respondent and no relief is sought against the 3rd respondent in the present appeal and prayed for dismissal of the appeal against the 3rd respondent.

8.Heard learned counsel appearing for the appellant, 2nd respondent-Insurance Company as well as the 3rd respondent-Transport Corporation and perused the materials available on record.

9.From the materials on record, it is seen that it is the contention of the learned counsel appearing for the appellant that in the accident, the appellant sustained fracture and grievous injuries all over the body. To prove the nature of injuries and disability, the appellant examined herself as P.W.1 and examined P.W.2 Doctor. P.W.2 Doctor assessed the disability of the appellant as 65% and issued disability certificate, marked as Ex.P7. The respondent has not let in any contra evidence to the evidence of PW2-Doctor and disability certificate. The Tribunal reduced the percentage of disability to 50% without assigning any reasons and the same is not correct. Considering the evidence of P.W.2 Doctor, disability certificate and the nature of injuries sustained, the appellant is entitled to compensation towards 65% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,30,000/- [Rs.2,000/- x 65%], at the rate of Rs.2,000/- per percentage for 65% disability. It is the contention of the appellant that at the time of accident, she was working as Agricultural Coolie and was earning a sum of Rs.6,000/- per month. She failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a meagre sum of Rs.3,000/- per month as notional income of the appellant and awarded a sum of Rs.9,000/- towards loss of income for three months. Due to the accident, the appellant would not have worked atleast for six months. The accident is of the year 2005. A sum of Rs.4,000/- per month is fixed as notional income of the appellant and the amount awarded by the Tribunal towards loss of income is enhanced to Rs.24,000/- [Rs.4,000/- x 6 months], at the rate of Rs.4,000/- for six months. For the injuries sustained in accident, the appellant has taken treatment as in-patient in Government Hospital, Tiruvannamalai, Jipmer Hospital, Pondicherry, Government General Hospital, Chennai and at various private Hospitals. The appellant has produced discharge summary of Government General Hospital, Chennai as Ex.P5, to prove that she has taken in-patient treatment. The Tribunal failed to award any amount towards attendant charges, transportation expenses,

medical expenses and damages to clothes. Considering the nature of injuries and period of treatment taken, the appellant is entitled to a sum of Rs.7,500/- each towards medical expenses, transportation, attendant charges and Rs.500/- towards damages to clothes. Considering the disability suffered by the appellant, the amount awarded by the Tribunal towards extra nourishment is meagre and hence the same is enhanced to Rs.7,500/-. The amount awarded by the Tribunal towards pain and suffering is just and reasonable and hence, the same is hereby 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	1,00,000/-	1,30,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	5,000/-	7,500/-	Enhanced
4.	Loss of income	9,000/-	24,000/-	Enhanced
5.	Transportation	-	7,500/-	Granted
6.	Attendant charges	-	7,500/-	Granted
7.	Medical expenses	-	7,500/-	Granted
8.	Damages to clothes	-	500/-	Granted
	Total	1,39,000/-	2,09,500/-	Enhanced by Rs.70,500/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,39,000/- is enhanced to Rs.2,09,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the 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.582 of 2006. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with

interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.
No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

gsa

To

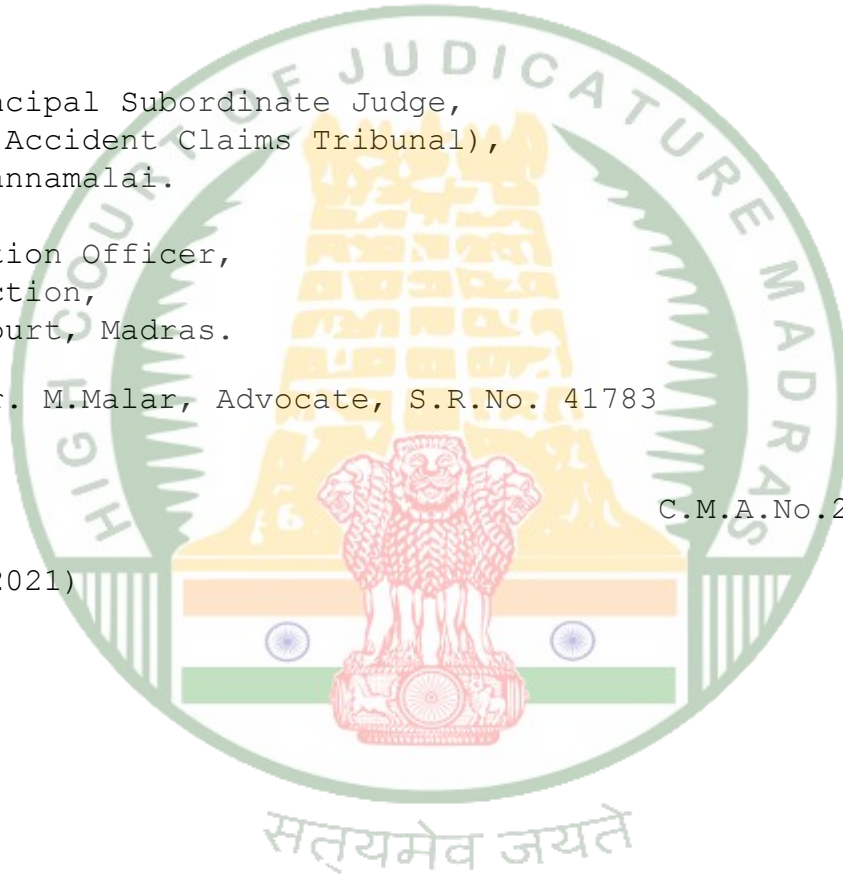
1.The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

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

+1cc to Mr. M.Malar, Advocate, S.R.No. 41783

C.M.A.No.2402 of 2014

VBA (CO)
GN (07/04/2021)



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