

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.45 of 2014
and C.M.P. No. 24384 of 2019

Manjula

.. Appellant

Vs.

1.A. Kavitha

2.Sriram General Insurance Co.Ltd.,

No.62, 2nd Floor, City Centre Complex,

Thirumalai Pillai Road,

T. Nagar, Chennai 600 017.

.. Respondents

(R1 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.01.2013, made in M.C.O.P. No.2856 of 2010, on the file of the VI Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. K.V. Muthu Visakan

For Respondents: Mr. S. Dhakshnamoorthy (For R2)

R1 set exparte before the Tribunal

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 02.01.2013, made in M.C.O.P. No.2856 of 2010, on the file of the VI Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2856 of 2010, on the file of the VI Judge, Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 28.03.2010.

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 Tanker Lorry belonging to the 1st respondent and directed the 2nd respondent

who is the insurer of the offending vehicle to pay a sum of Rs.8,60,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 02.01.2013, made in M.C.O.P. No.2856 of 2010, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant suffered 100% disability and proved the same by examining P.W.2 Doctor and producing documents. She has taken treatment as in-patient in Government General Hospital for a period of 68 days in two different spells and has undergone surgery. Her right leg below hip was amputated. She cannot walk without help of others and even to do her routine work, she requires help from others. She lost her entire earning capacity. She was working as an Office Assistant at Gayathri Finance Pvt. Ltd., Ayanavaram, Chennai and was earning a sum of Rs.6,000/- per month. The Tribunal erroneously fixed the meagre sum of Rs.4,500/- per month. Even during chief examination, she has deposed that she needs continuous treatment and will incur future medical expenses. The appellant approached M/s.Endolite India Ltd., for purchasing Artificial Limb on 09.09.2019 and after examination of amputation level, they suggested an Artificial Limb of ESK + PSPC Knee Joint with MF Foot and issued a Quotation for Rs.4,00,890/- for Artificial Limb. The appellant filed C.M.P.No.24384 of 2019 to receive the Original Quotation dated 09.09.2019 as additional evidence. The Tribunal failed to award any amount towards mental agony, additional transport expenses, and loss of earning power. The amounts awarded by the Tribunal towards pain and suffering, transportation, extra nourishment, medical expenses, loss of income, future medical expenses and loss of amenities 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 appellant did not let in any acceptable evidence with regard to avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed Rs.4,500/- per month as notional income, which is not meagre. The injuries and disability suffered by the appellant is schedule injury. The Tribunal fixed disability at 70% as per Schedule II of the Employees Compensation Act. The appellant has not spent the amount mentioned in the quotation submitted by her for purchase of artificial limb. The quotation submitted by the appellant is on the higher side. Hence, she is not entitled to the said amount. The amounts awarded by the Tribunal under different heads are excessive. She has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that in the accident, the appellant suffered fracture in the right leg, crush injury and injuries in stomach. Her right leg below hip and above knee was amputated. She also underwent surgery in the small intestine. The appellant examined herself as P.W.1 and examined Doctor as P.W.3 and produced two discharge summaries and other documents as Exs.P2 to P5 and P8 to prove the injuries and disability. P.W.3-Doctor examined the appellant and assessed that the appellant suffered 100% disability for both amputation and surgery in small intestine. The Tribunal accepted 20% disability assessed for small intestine by P.W.3 - Doctor and granted compensation at the rate of Rs.2,000/- per percentage for 20% disability. The accident is of the year 2010. The appellant is entitled to a sum of Rs.3,000/- per percentage for 20% disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.60,000/- [Rs.3,000/- x 20%].

9. As far as the amputation is concerned, the Tribunal considering the nature of injuries and amputation, fixed 70% permanent disability as per schedule in the Employees Compensation Act and granted compensation by adopting multiplier method. The appellant claimed that she was an Office Assistant at Gayathri Finance Pvt. Ltd., Ayanavaram, Chennai and was earning a sum of Rs.6,000/- per month. She failed to prove the same. The Tribunal fixed Rs.4,500/- per month as notional income of the appellant. Considering the date of accident and the nature of work, a sum of Rs.6,000/- per month is fixed as the income as claimed by the appellant. The appellant was aged 30 years at the time of accident. The Tribunal erroneously applied the multiplier '18', as against the correct multiplier '17'. Hence, applying the multiplier '17', the compensation awarded by the Tribunal towards permanent disability is modified to Rs.8,56,800/- [Rs.6,000/- x 12 x 17 x 70%]. The Tribunal has awarded a sum of Rs.13,500/- towards loss of income for a period of 3 months. Considering the nature of injuries and disability suffered, the appellant would not have worked at least for a period of six months. Hence, the compensation granted by the Tribunal towards loss of income is enhanced to Rs.36,000/- at the rate of Rs.6,000/- per month for six months.

10. The appellant has taken treatment as in-patient in Government General Hospital, Chennai, for a period of 68 days in two different spells from 28.05.2010 to 28.03.2010 and 12.10.2010 to 20.10.2010. The Tribunal has awarded a meagre sum towards attendant charges and transportation expenses. Considering the period of treatment and nature of injuries, the

same are enhanced to Rs.20,000/- each. Pending appeal, the appellant filed C.M.P.No.24384 of 2019, enclosing Original Quotation issued by M/s.Endolite India Ltd., having Office at AA-23, 3rd Street, 3rd Main Road, Annanagar, Chennai 600 040 mentioning the cost of Rs.4,00,890/- for artificial limb, to receive the same as additional evidence. The learned counsel appearing for the 2nd respondent-Insurance Company contended that the amount mentioned in the Quotation is on the higher side. The 2nd respondent has not verified with any other Company and produced any Quotation for Artificial Limb as claimed by the appellant. Considering the averments in the affidavit filed in support of the above C.M.P, the documents filed and deposition of the appellant that she requires future medical expenses and treatment, nature of injuries and amputation of the right leg below hip, it will be beneficial to the appellant if artificial limb is fixed. Hence, C.M.P.No.24384 of 2019 is ordered. The appellant is entitled to a sum of Rs.4,00,000/- towards Artificial Limb. The 2nd respondent is directed to deposit a sum of Rs.4,00,000/- granted towards Artificial Limb within a period of eight weeks from the date of receipt of a copy of this order, failing which, the appellant is entitled to interest at the rate of 7.5% per annum. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

11.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	13,500/-	36,000/-	Enhanced
2.	Transportation	15,000/-	20,000/-	Enhanced
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Damages to clothes	1,600/-	1,600/-	Confirmed
5.	Medical expenses	10,000/-	10,000/-	Confirmed

6	Attendant charges	5,000/-	20,000/-	Enhanced
7.	Loss of amenities	25,000/-	25,000/-	Confirmed
8.	Pain and suffering	35,000/-	35,000/-	Confirmed
9.	Future medical expenses	25,000/-	25,000/-	Confirmed
10.	Disability	40,000/-	60,000/-	Enhanced
11.	Permanent disability	6,80,400/-	8,56,800/-	Enhanced
12.	Artificial limb	-	4,00,000/-	Granted
	Total	8,60,500/-	14,99,400/-	Enhanced by Rs.6,38,900/-

12. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.8,60,500/- is enhanced to Rs.14,99,400/- 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 enhanced award amount, now determined by this Court, along with interest and costs, excluding the sum of Rs.4,00,000/- awarded towards Artificial Limb, 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.2856 of 2010. The 2nd respondent is directed to deposit the sum of Rs.4,00,000/- granted towards Artificial Limb within a period of eight weeks from the date of receipt of a copy of this order, failing which, the appellant is entitled to interest at the rate of 7.5% per annum. 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. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.6,38,900/-. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

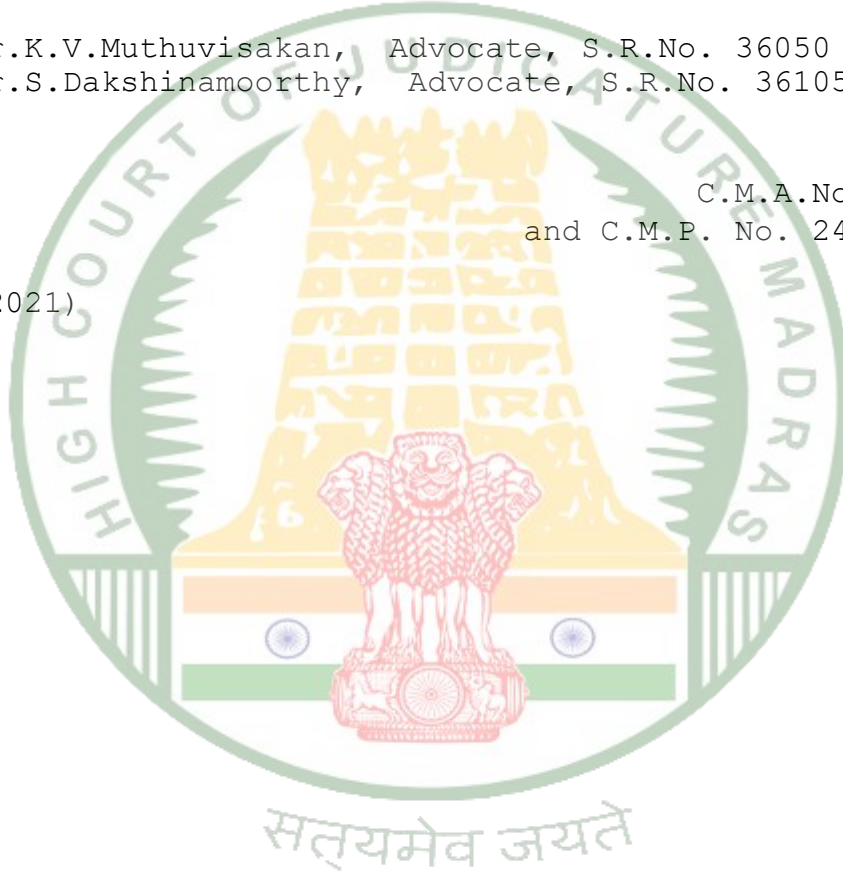
1.The VI Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No. 36050
+1cc to Mr.S.Dakshinamoorthy, Advocate, S.R.No. 36105

C.M.A.No.45 of 2014
and C.M.P. No. 24384 of 2019

SSV(CO)
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