

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.633 of 2014

Sumithra Thapa

...Appellant

vs.

1.Dr.A.Diwakar

(Remained ex-parte before the Trial Court)

2.United India Insurance Co. Ltd.,
134, Grems Road,
Chennai – 6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.11.2013 MACT.O.P.No.2455 of 2012, on the file of the III Small Causes Court, (Motor Accidents Claims Tribunal) Chennai.

For Appellant

:

Mr.R.Kalai Arasan

For Respondents

:

R1 – exparte

Ms.R.Rathana Thara for R2

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 11.11.2013 passed by the Motor Accident Claims Tribunal, III Small Causes Court, Chennai in M.C.O.P.No.2455 of 2012.

2.Heard Mr.R.Kalai Arasan, learned counsel for the Appellant and Ms.R.Rathana Thara, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.3,50,000/- together with interest and cost for the injuries sustained by him as a result on accident on 23.04.2012 caused by a vehicle owned by the first respondent and insured with the Appellant.

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Loss of Income	-	Rs.35,000/-
Transport to hospital	-	Rs.7,000/-
Extra nourishment	-	Rs.7,000/-
Damage to clothing	-	Rs.1,000/-
Medical expenses	-	Rs.1,25,000/-
Future medical expenses	-	Rs.40,000/-
Attender charges	-	Rs.5,000/-
Loss of amenities	-	Rs.10,000/-
Pain and suffering	-	Rs.30,000/-
Permanent disability	-	Rs.90,000/-

Total **Rs.3,50,000/-**

5.The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement.

6.The Appellant/claimant in her claim petition filed before the Tribunal has pleaded that she was aged 25 years and was a beautician employed with M/s.Feather Touch Beauty Parlour, Vembuliamman Koil Street, Virugambakkam, Chennai – 93, earning Rs.15,000/- per month plus free boarding at the time of the accident.

7.Before the Tribunal, the Appellant/claimant has filed 14 documents which were marked as Exs.P1 to P14 and three witnesses were examined on her side namely, the Appellant/claimant herself as PW1, the Doctor who examined her as PW2 and a co-worker Ms.P.Lavanya was examined as PW3. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

8.The Appellant/claimant has sustained the following injuries:

- (a)Fracture left femur
- (b)Right side facial injury
- (c)Lacerated injury over left elbow
- (d)Injury over right eye
- (e)Multiple injuries

9.The Appellant/claimant has filed her salary certificate (Ex.P14) which

discloses that she was earning Rs.15,000/- per month at the time of the accident. However, the Tribunal has assessed the monthly income of the Appellant/claimant at Rs.7,000/-. The co-worker of the Appellant/claimant Ms.P.Lavanya, who was examined as PW3 has deposed before the Tribunal that the Appellant/claimant was earning Rs.15,000/- per month at the time of the accident. Ms.P.Lavanya (PW3) has also filed her beautician training certificate which has been marked as Ex.P13 before the Tribunal. However, the Appellant/claimant has not filed her certificate before the Tribunal to prove that she was a qualified beautician. However, this Court is of the considered view that the Tribunal ought to have appreciated the evidence placed by the Appellant/claimant as well as the oral evidence adduced by PW3, the co-worker of the Appellant/claimant while assessing the monthly income of the Appellant/claimant.

10.However, as seen from the impugned Award, the Tribunal has not properly appreciated the oral evidence adduced by the Appellant/claimant (PW1) as well as her co-worker (PW3) and also the documentary evidence namely, the salary certificate (Ex.P14) of the Appellant/claimant and the beautician training certificate of the co-worker of the Appellant/claimant (Ex.P13). If due consideration was given to them, the Tribunal would have fixed the monthly income of the Appellant/claimant at a higher sum. After giving due consideration to the aforementioned factors, this Court is of the considered view that the monthly income of the Appellant/claimant will have to

be fixed at Rs.10,000/- instead of Rs.7,000/- fixed by the Tribunal.

11.The Tribunal has awarded a compensation of Rs.35,000/- to the Appellant/claimant towards loss of income during the period of her treatment calculated at Rs.7,000/- per month for a period of 5 months. After giving due consideration to the nature of injuries sustained by the Appellant/claimant, the assessment made by the Tribunal is a correct assessment. However, since the monthly income of the Appellant/claimant is enhanced by this Court from Rs.10,000/- from Rs.7,000/- fixed by the Tribunal, the compensation towards loss of income for a period of 5 months is enhanced to Rs.50,000/- calculated at Rs.10,000/- per month for a period of 5 months instead of Rs.35,000/- fixed by the Tribunal.

12.The Tribunal has awarded a meagre compensation towards transportation and extra nourishment. It has to be necessarily enhanced considering the year of the accident and the nature of injuries sustained by the Appellant/claimant. Accordingly, this Court enhances the compensation towards transportation from Rs.7,000/- to Rs.12,000/- and similarly towards extra nourishment from Rs.7,000/- to Rs.12,000/-.

13.Insofar as the compensation towards medical expenses and damages to clothing and articles awarded by the Tribunal at Rs.1,25,000/- and Rs.1,000/- respectively are concerned, the same has to be confirmed by this Court as it is in

accordance with the documents filed by the Appellant/claimant before the Tribunal as well as it is in accordance with the settled practice. Therefore, the compensation awarded under the aforesaid heads is confirmed by this Court.

14.After giving due consideration to the nature of injuries sustained by the Appellant/claimant which have been indicated by this Court in the eighth paragraph of this judgment, the compensation awarded by the Tribunal towards future medical expenses will have to be enhanced from Rs.40,000/- to Rs.50,000/-. Accordingly, the same is modified by this Court.

15.The Appellant/claimant has suffered 45% disability as seen from the disability certificate (Ex.P11) issued by the Doctor who was also examined as a witness (PW2) before the Tribunal.

16.The Tribunal has awarded a disability compensation of Rs.90,000/- to the Appellant/claimant for the 45% disability calculated at Rs.2,000/- per percentage of disability. The accident happened in the year 2012. If the year of the accident and the nature of injuries sustained by the Appellant/claimant was given due consideration by the Tribunal, the disability compensation would have been much higher. As seen from the impugned Award, the Tribunal has not given due consideration to the nature

injuries sustained by the Appellant/claimant and the year of the accident while assessing the disability compensation. In the considered view of this Court, the disability compensation awarded by the Tribunal is low and it has to be necessarily enhanced. Accordingly, this Court enhances the disability compensation to Rs.1,35,000/- calculated at Rs.3,000/- per percentage of disability for the 45% disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

17.Insofar as the compensation awarded by the Tribunal towards loss of amenities at Rs.10,000/- and attender charges at Rs.5,000/- are concerned, the same is a just compensation and there is no scope for interference. Accordingly, the same is confirmed by this Court.

18.The Tribunal has also awarded a meagre compensation of Rs.30,000/- towards pain and suffering. The injuries sustained by the Appellant/claimant are indeed grievous in nature and would have caused an enormous amount of pain and suffering to the Appellant/claimant. Considering the said fact, this Court enhances the compensation to the Appellant/claimant towards pain and suffering from Rs.30,000/- to Rs.50,000/-.

19.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,50,000/- to Rs.4,50,000/- by this Court in the following manner:

<i>Heads</i>	<i>Awarded by the Tribunal in Rs.</i>	<i>Enhanced by this Court in Rs.</i>
Loss of Income	(7,500x 5 months) 35,000/-	(10,000 x 5 months) 50,000/-
Transport to hospital	7,000/-	12,000/-
Extra nourishment	7,000/-	12,000/-
Damage to clothing	1,000/-	1,000/-
Medical expenses	1,25,000/-	1,25,000/-
Future medical expenses	40,000/-	50,000/-
Attender charges	5,000/-	5,000/-
Loss of amenities	10,000/-	10,000/-
Pain and suffering	30,000/-	50,000/-
Permanent disability	90,000/-	1,35,000/-
Total	Rs.3,50,000/-	Rs.4,50,000/-

20. In the result, the appeal is partly allowed. The second respondent Insurance Company is directed to deposit the modified award amount of Rs.4,50,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, after deducting the amount already deposited if any, to the credit of M.C.O.P.No.2455 of 2012, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of M.C.O.P.No.2455 of 2012 to the bank account of the appellant /claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment. No costs.

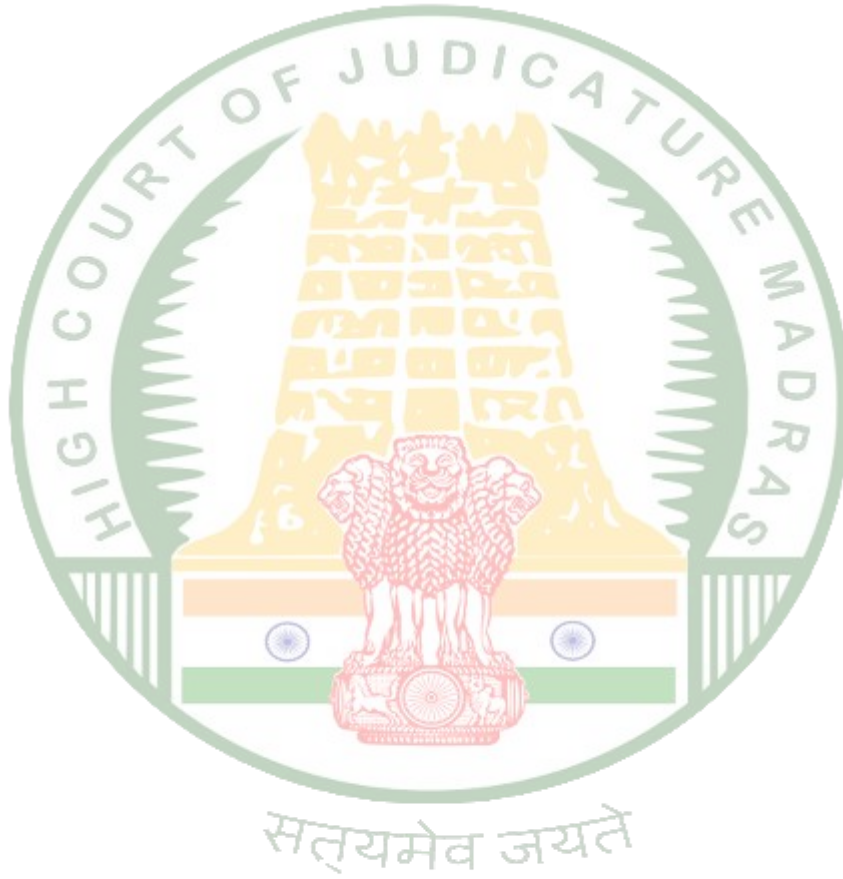
30.09.2020

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order



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ABDUL QUDDHOSE, J.

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To

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

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



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