

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3652 of 2019

C.Chandra

.. Appellant

Vs.

1.M/s.Aravinduja Motors Private Limited,
105, Kamala Gardens,
Mount Poonamallee Road,
Kumananchavadi Circle,
Chennai - 600 056.

(R1 remained exparte before Tribunal.
Hence, notice dispensed with)

2.The Manager,
United India Insurance Company Limited,
Third Party Claim Office,
134, Greams Road,
Chennai - 600 006.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.09.2018 made in M.C.O.P.No.1231 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Ms.P.T.Saleem Fathima

For R2 : Mr.D.Bhaskaran

r1 : Exparte

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 27.09.2018 made in M.C.O.P.No.1231 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.1231 of 2015 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by her in the accident that took place on 27.11.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.4,80,700/- 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 multiple grievous injuries and she underwent three surgeries. She has taken treatment as in-patient in three different hospitals in three different spells from 27.11.2014 to 29.11.2014, 02.12.2014 to 05.12.2014 and from 20.03.2015 to 23.03.2015 and continued her treatment as out-patient. The Medical Board assessed that appellant suffered 35% disability. The Tribunal ought to have fixed loss of earning capacity as 100% and awarded compensation for 100% loss of earning capacity instead of 15%. The appellant was doing Saree Business and earning a sum of Rs.400/- per day. The Tribunal erroneously fixed a meagre sum of Rs.8,000/- per month as notional income instead of fixing Rs.12,000/- per month as notional income. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal without any basis fixed 15% as loss of earning capacity and awarded compensation by adopting multiplier method. The appellant has not proved that she suffered functional disability and lost her earning capacity. The Tribunal ought to have awarded compensation only on percentage method. The Tribunal has awarded excessive amounts under different heads. 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 she suffered both bone fracture on her left leg, left hand second, third and fourth metacarpal fracture, undisplaced left scapula fracture, left forearm laceration and multiple injuries all over her body. The Medical Board has examined the appellant and certified that appellant suffered 35% disability. The percentage of disability certified by the Medical Board is not for loss of earning capacity. The Tribunal considering the contention of the appellant that she was doing Saree Business, awarded compensation by adopting multiplier method as the appellant would have lost her earning power. The Tribunal considering the nature of injuries, fractures, percentage of disability, fixed 15% as loss of earning capacity and awarded compensation by adopting multiplier method. The percentage of disability fixed by the Tribunal is proper. The appellant claimed that she was earning a sum of Rs.400/- per day by doing Saree Business. But she failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.8,000/- per month as notional income of the appellant. The accident occurred in the year 2014 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.10,000/- per month is fixed as notional income of the appellant. The Tribunal has granted 25% towards future prospects, which is proper. The appellant has not proved that she lost her 100% earning capacity and hence, she is not entitled to compensation for 100% loss of earning capacity. Thus, the amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.3,15,000/- {Rs.12,500/- [Rs.10,000/- + Rs.2,500/- (25% of Rs.10,000/-)] X 12 X 14 X 15/100}.

9. From the award passed by the Tribunal, it is seen that the appellant has taken treatment as in-patient in three different hospitals on three different spells from 27.11.2014 to 29.11.2014, 02.12.2014 to 05.12.2014 and from 20.03.2015 to 23.03.2015. The amount awarded by the Tribunal towards attendant charges is meagre and hence, the same is enhanced to Rs.15,000/-. The Tribunal has awarded a sum of Rs.10,000/- together for transportation and extra nourishment, which is not correct and the same is modified as the appellant is entitled to a sum of Rs.10,000/- towards transportation and a sum of Rs.15,000/- towards extra nourishment. The amounts awarded by the Tribunal towards pain and sufferings, medical expenses and loss of amenities are just and reasonable and hence, the same are 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.	Loss of earning capacity	2,52,000/-	3,15,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Transportation and Extra nourishment	10,000/-	10,000/-	Enhanced
			15,000/-	Enhanced
4.	Attendant charges	4,400/-	15,000/-	Enhanced
5.	Medical expenses	1,74,230/-	1,74,230/-	Confirmed
6.	Loss of amenities	15,000/-	15,000/-	Confirmed
	Total	Rs.4,80,630/- rounded off to Rs.4,80,700/-	Rs.5,69,230/- rounded off to Rs.5,69,300/-	enhanced by Rs.88,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,80,700/- is hereby enhanced to Rs.5,69,300/- 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, 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.1231 of 2015 on the file of the Motor Accident Claims Tribunal, V 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.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

krk

To

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

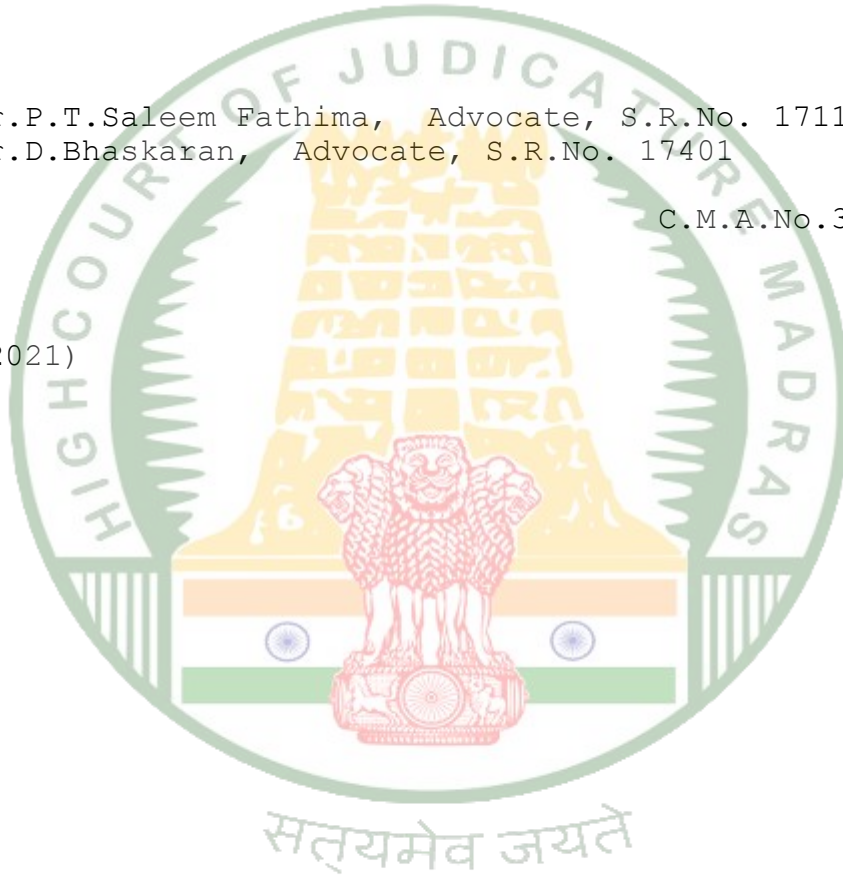
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.P.T.Saleem Fathima, Advocate, S.R.No. 17110

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 17401

C.M.A.No.3652 of 2019

SPD(CO)
GN(11/01/2021)



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