

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.218 OF 2017

S.Grace

.. Appellant/Petitioner

Vs.

1. S.Searan
(The 1st respondent was set ex parte in the lower court)

2. The Manager,
The New India Assurance Company Ltd.,
Having Office at No.45, Moore Street,
V-Floor, Chennai - 600 001.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.11.2011 made in M.C.O.P.No.882 of 2008 on the file of Motor Accident Claims Tribunal, Principal District Court, Thiruvallur.

For Appellant : M/s.Anand and Suryas

For R2 : Mr.G.Anandan

J U D G M E N T
सत्यमेव जयते

The Civil Miscellaneous Appeal is filed for enhancement of the compensation granted by the Tribunal in its award dated 18.11.2011 made in M.C.O.P.No.882 of 2008 on the file of Motor Accident Claims Tribunal, Principal District Court, Thiruvallur.

2.The brief facts of the case are as follows:

On 29.09.2008, at about 06.30 a.m. the appellant was travelling as a pillion rider along with her friend in the two wheeler bearing Registration No.TN 23 L 0526 along the Arakkonam - Sholingur Road, near new over bridge, Arakkonam. At that time, the lorry bearing Registration No.TN 21 L 2170, belonging to the 1st respondent, came in a rash and negligent manner and dashed

against the two wheeler, as a result of which, the appellant sustained grievous and multiple injuries all over the body. Therefore, the appellant has filed a claim petition claiming a sum of Rs.2,00,000/- as compensation. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said lorry, to jointly and severally, pay a sum of Rs.42,300/- as compensation to the appellant.

3. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

4. The learned counsel appearing for the appellant contended that the appellant sustained left clavicle fracture, severe head injuries and multiple injuries all over the body; that the appellant took treatment as in-patient in the Government Hospital, Arakkonam for four days. The appellant being a coolie, due to the injuries sustained by her, could not continue her work for more than six months as before. P.W.3/Doctor has assessed the disability of the appellant as 45% i.e., for the fracture injuries @ 35% and head injuries @ 10%, but the Tribunal reduced the disability to 30%. The Tribunal has not awarded any amount towards loss of amenities. The amounts awarded by the Tribunal under different heads are meagre, according to the learned counsel.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company contended that the Tribunal after considering the materials and evidence available on record, has awarded the just, fair and reasonable compensation. The appellant has not made out any case for enhancement of compensation, according to the learned counsel for the Insurance Company.

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

7. It is the contention of the appellant that she sustained the following injuries:

- (i) Laceration of 3 x 1 cm over angle of right eye
- (ii) Laceration of 3 x 3 cm over right dorsum hand region
- (iii) Laceration of 3 x 2 cm over left side back of scalp
- (iv) Multiple abrasion of 2 x 1 cm length over both right and left foot

- (v) Laceration of 2 x 1 cm over left fore arm region
(vi) Pain over right arm chest region

To prove the nature of injuries she examined P.W.3/Doctor who deposed to that effect. P.W.3/Doctor Dr.J.R.R.Thiagarajan has assessed the disability of the appellant as 45% i.e., for the fracture injuries 35% and head injuries 10% and marked Ex.P7/wound certificate, Ex.P8/discharge summary, Ex.P9/scan bill, Ex.P10/disability certificate and Ex.P11/x-ray. The Tribunal reduced the disability to 30% holding that the disability assessed by the doctor is slightly on the higher side and awarded a sum of Rs.30,000/- (30% x Rs.1,000/-) towards disability at the rate of Rs.1,000/- per percentage of disability which is not proper. The accident occurred in the year 2008. The Tribunal has granted a sum of Rs.1,000/- per percentage of disability, which is meagre. The appellant is entitled to a sum of Rs.2,000/- per percentage of disability and further, reduction of the percentage of disability fixed by the Doctor, is also not proper. If the percentage of disability is taken as 45%, as fixed by the Doctor, and a sum of Rs.2,000/- is awarded per percentage of disability, the amount towards disability works out to Rs.90,000/- and accordingly, it is awarded.

8. According to the appellant, she was working as a coolie at the time of the accident and was earning a sum of Rs.150/- per day. The appellant took treatment as in-patient in the Government Hospital, Arakkonam from 29.09.2008 to 02.10.2008 and still continuing treatment privately. The amounts awarded by the Tribunal towards pain & suffering, loss of income and transport to hospital & extra nourishment are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded by the Tribunal towards pain & suffering, loss of income and transport to hospital & extra nourishment are hereby enhanced to Rs.10,000/-, Rs.12,000/- and Rs.3,000/- respectively. The amount awarded by the Tribunal towards medical expenses is confirmed, since it is an actual expenditure. 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 or reduced
1.	Disability	30,000	90,000	Enhanced
2.	Pain and suffering	5,000	10,000	Enhanced

3.	Loss of income	5,000	12,000	Enhanced
4.	Transport to hospital and extra nourishment	2,000	3,000	Enhanced
5.	Medical expenses	300	300	Confirmed
	Total	Rs.42,300/-	Rs.1,15,300/-	Enhanced to Rs.73,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.42,300/- is hereby enhanced to Rs.1,15,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled to interest for the compensation amount, in respect of the period of delay in filing this appeal. It is also made clear that the appellant has to pay the appropriate Court fee in order to receive the awarded amount. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to deposit the modified amount of compensation now determined by this Court along with interest and costs, jointly and severally, after deducting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the same on making proper application before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Principal District Judge,
The Motor Accident Claims Tribunal, Thiruvallur.
2. The Section Officer
V.R.Section, High Court, Chennai.

C.M.A.No.218 of 2017

SR(CO)
CS/03/05/2021