

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2402 of 2017

T.Chitra .. Appellant/Petitioner
Vs.

1.S.Naresh Kumar
(R-1 ex-parte in lower Court)

2.The United India Insurance Co.Ltd.
The Divisional Manager,
No.73-C, MTH Road, Ambattur,
Chennai-600 053. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.10.2013 made in M.C.O.P.No.111 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Ponneri.

For Appellant : Mr.I.Rathinavel
For R2 : No Appearance
R1 : Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 01.10.2013 made in M.C.O.P.No.111 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Ponneri.

2. The appellant is the claimant in M.C.O.P.No.111 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Ponneri. She filed the above claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.12.2009.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving by the driver of the motorcycle belonging to the first respondent herein and directed the second respondent-Insurance Company, being insurer of the motorcycle to pay a sum of Rs.3,85,650/- 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 for enhancement of compensation.

5. The learned counsel appearing for the appellant contended that in the accident appellant sustained multiple injuries, disability and has taken treatment in Guest Hospital from 31.12.2009 to 11.01.2010 and a surgery was done on 01.01.2010. Again she was admitted on 30.09.2010 for implant removal - Transiliac Rod and discharged on 01.10.2010. The appellant was admitted in the same hospital for third time on 24.12.2010 for implant removal at right forearm and discharged on 25.01.2011. At the time of accident, the appellant was working as Tailor and was earning a sum of Rs.6,000/- per month. Due to the injuries and disability sustained by her, the appellant could not continue her work as she was doing earlier. The Tribunal ought to have applied multiplier method to award compensation. The appellant suffered 90% disability. The Tribunal failed to consider the evidence of P.W.2-Doctor and Exs.P3 to P5 and P12 to 16 while awarding compensation for disability. The Tribunal ought to have awarded compensation separately for loss of earning capacity. The amounts awarded by the Tribunal for transportation, extra nourishment and loss of income are meagre. The Tribunal ought to have granted compensation for loss of income for eight months. The Tribunal has not awarded any amounts towards attendant charges, loss of amenities and damage to clothes. The amounts awarded by the Tribunal under different heads are meagre and therefore, prayed for enhancement of compensation.

6. Though the 2nd respondent has been severed and their name is printed in the cause list, there is no representation for the 2nd respondent.

7. Heard the learned counsel appearing for the appellant and perused the materials available on record.

8. From the materials on record it is seen that the appellant suffered grievous injuries in the accident and she underwent surgery. Subsequent to the said treatment the appellant was admitted in the hospital for two times for removal of implants. The appellant contended that she was a Tailor and was earning a sum of Rs.6,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed monthly income at Rs.3,000/-. The accident occurred in the year 2009 and the notional income fixed by the Tribunal is meagre. The notional income of the appellant is fixed at Rs.6,000/-. The Tribunal has granted only a meagre sum of Rs.6,000/- towards loss of income for two months. Considering the nature of

injuries and period of treatment taken by the appellant, she would not have attended her work atleast for a period of eight months. Hence, a sum of Rs.48,000/- (Rs.6,000/- X 8 months) is granted towards loss of income for eight months. The appellant has taken treatment for 46 days on three occasions and underwent three surgeries. The compensation awarded by Tribunal for extra nourishment, transportation are meagre and the same are enhanced to Rs.20,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attendant charges, loss of amenities and damages to clothes. Considering the nature of injuries and period of treatment taken, the appellant is entitled to a sum of Rs.25,000/- each towards attendant charges and loss of amenities and Rs.1,000/- towards damages to clothes respectively. P.W.2-Doctor has assessed the disability of the appellant at 90% for four parts of the body. He admitted in the cross examination that the disability for the whole body will be 60%. In view of such admission by P.W.2-Doctor, the Tribunal has awarded compensation for 60% disability by adopting percentage method. The appellant has not proved that she suffered functional disability and loss of earning power. Further, the appellant is granted compensation for loss of income for the period of eight months in addition to compensation for 60% disability. Hence, the appellant is not entitled to compensation separately for loss of earning capacity. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Permanent disability due to injury	1,20,000/-	1,20,000/-	confirmed
2.	Transportation	3,000/-	10,000/-	enhanced
3.	Loss of income	6,000/-	48,000/-	enhanced
4.	Medical expenses	2,28,650/-	2,28,650/-	confirmed
5.	Pain & suffering	25,000/-	25,000/-	confirmed
6.	Extra nourishment	3,000/-	20,000/-	enhanced
7.	Attendant charges	-	25,000/-	granted

8.	Loss of amenities		25,000/-	granted
9.	Damage to clothes	-	1,000/-	granted
	Total	Rs.3,85,650/-	Rs.5,02,650/-	enhanced by Rs.1,17,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,85,650/- is hereby enhanced to Rs.5,02,650/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.111 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Ponneri. 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 filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi
To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Ponneri.

Copy to
The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.No.2402 of 2017

EV (CO)
RMP (19/12/2020)