

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No. 2582 of 2017

S. Nagalakshmi

... Appellant

Vs.

1.M/s. Scope International Private Ltd.,
No.1, Haddows Road,
Nungambakkam, Chennai 600 006.

2.ICICI Lombard General Insurance Co.
Chotabhai Towers,
No. 140, Nungambakkam High Road,
Chennai 600 006.

Now functioning at
ICICI Lombard General Insurance Co. Ltd.,
Harihant Plaza, 1st Floor,
No. 83/84, Walltax Road,
Chennai 600 003.

.... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.02.2017, made in M.C.O.P. No. 2434 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Ms. P.T. Salim Fathima

For Respondents: Mr. Pranava Charan (for R1)

Mrs. R. Sree Vidhya (For R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 06.02.2017, made in M.C.O.P. No. 2434 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is claimant in M.C.O.P. No. 2434 of 2013, on the file of the II Court of Small Causes, (Motor Accident Claims

Tribunal), Chennai. She filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by her in the accident that took place on 11.11.2012.

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 Car belonging to the 1st respondent and directed the 2nd respondent as insurer of the said vehicle to pay a sum of Rs.3,17,000/- 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.

5.Learned counsel appearing for the appellant contended that in the accident, the appellant sustained compound and comminuted 7 fractures in the left eye ball leading to double vision, disfiguration of face, dislocation of bone and ligament injury in right leg knee. P.W.2 - Ortho Doctor has assessed the disability of the appellant as 45% and P.W.3 - Eye Doctor has assessed the disability of the appellant as 25%. The Tribunal having accepted the disability certificates, erred in awarding only a sum of Rs.1,59,000/- as compensation. The amounts awarded by the Tribunal towards attendant charges, transportation, extra nourishment and other miscellaneous expenses are meagre. The appellant sustained multiple fractures and she is facing difficulty in performing her day-to-day activities. The Tribunal has not awarded any amount for continuing permanent disability, loss of expectation of life, future medical expenses and expenses towards maintenance of family. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.The learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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

8.It is the contention of the appellant that in the accident, she sustained compound and comminuted 7 fractures in the left eye ball leading to double vision, disfiguration of face, dislocation of bone and injury in the right leg knee. P.W.2-Doctor assessed that the appellant suffered 45% partial and permanent disability and P.W.3 - Eye Doctor has assessed that the appellant suffered 25% disability. The Tribunal considering the evidence of P.W.2 and P.W.3 Doctors, two disability certificates, arrived at 58% total functional

disability and reduced the same to 53% on the ground that the assessment of disability may vary from Doctor to Doctor. The respondents did not let in any contra evidence to disprove the evidence of P.W.2 and P.W.3-Doctors and disability certificates marked as Ex.P18 and P21. Hence, the appellant is entitled to compensation towards 70% disability and the amount awarded by the Tribunal towards disability is enhanced to Rs.2,10,000/- (Rs.3,000/- x 70%), at the rate of Rs.3,000/- per percentage for 70% disability. The appellant has not proved that she requires future medical treatment and hence, she is not entitled for compensation towards future medical expenses. 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.	Transportation , nourishing food and miscellaneous expenditure	50,000/-	50,000/-	Confirmed
2.	Medical expenses	10,000/-	10,000/-	Confirmed
3.	Attendant charges	10,000/-	10,000/-	Confirmed
4.	Disability	1,59,000/-	2,10,000/-	Enhanced
5.	Pain and suffering	50,000/-	50,000/-	Confirmed
6.	Loss of amenities	25,000/-	25,000/-	Confirmed
7.	Loss of earning during the period of treatment	13,000/-	13,000/-	Confirmed
	Total	3,17,000/-	3,68,000/-	Enhanced by Rs.51,000/-

9. In the result, appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,17,000/- is enhanced to Rs.3,68,000/- together with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 2434

of 2013. 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 filling necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any, on the enhancement amount of Rs.51,000/-. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
Copy to

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

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

+1cc to M/s.M.Swamikannu, Advocate Sr.17419

C.M.A. No. 2582 of 2017

vsn II[co]
srg 03/11/2020

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