

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.505 of 2017

Arulmozhi

.. Appellant/Petitioner

Vs.

1. Shanmugam

2. The Managing Director,
Pondicherry Tourism Transport
Development Corporation,
Puducherry.
(Respondents 1 and 2 are remained
ex-parte before the Tribunal)

3. The Divisional Manager,
National Insurance Co., Ltd.,
Puducherry.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2007 made in M.C.O.P.No.701 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Puducherry.

For Appellant : Mrs.D.Chitra Maragatham
for Mr.T.R. Rajaraman

For R3 : No Appearance

R1 & R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.01.2007 made in M.C.O.P.No.701 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Puducherry.

2. The appellant is the claimant in M.C.O.P.No.701 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Puducherry. She filed the above claim petition, claiming a sum of Rs.4,88,000/- as compensation for the injuries sustained by her in the accident that took place on 28.06.1997.

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 Bus belonging to the 2nd respondent herein and directed the 3rd respondent-Insurance Company, being insurer of the Bus to pay a sum of Rs.48,000/- 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 for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained post traumatic disfigurement on left face, dental occlusion mal-united fracture of left maxilla and epiphora on the left eye. The appellant was admitted in the Government General Hospital, Erode and taken treatment from 28.06.1997 to 01.07.1997 and later she was also admitted as inpatient from 03.07.1997 to 09.07.1997 in MIOT Hospital, Chennai and underwent plastic surgery and incurred a sum of Rs.1,50,000/-. The Tribunal has awarded only a sum of Rs.6,000/- towards loss of income for 40 days based upon Ex.P7/salary certificate which shows that the appellant was earning a sum of Rs.4,200/- per month, whereas the appellant is entitled for compensation towards loss of income for minimum period of six months since even after discharge, the appellant was unable to attend her work due to injuries suffered by her. The Tribunal has awarded a meagre compensation towards pain and suffering, Traveling expenses & extra nourishment. The Tribunal has not awarded any amount towards attendant charges and loss of amenities and prayed for enhancement of compensation.

6.Though notice has been served on the 3rd respondent/Insurance Company and their name printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

8.It is the contention of the appellant that at the time of accident, she was working as Planning Assistant in Planning and Research Department, Puducherry and was earning a sum of Rs.4,200/- per month. To substantiate the same, she has filed ExP7/Salary slip. But, the Tribunal has awarded a meagre sum of Rs.6,000/- towards loss of income for 40 days. 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 six months. Hence, a sum of Rs.25,200/- (Rs.4,200/- X 6 months) is awarded towards loss of income for six months. In

the accident, the appellant suffered post traumatic disfigurement on left face, malunited fracture of left maxilla, alleged dental occlusion and epiphora on the left eye. To prove the same, she examined P.W.2/doctor who assessed the disability of the appellant as 30% and issued Ex.P5/disability certificate. The 3rd respondent did not let in any contra evidence to disprove the evidence of P.W.2-Doctor and Ex.P5/disability certificate. Hence, the Tribunal awarded a sum of Rs.30,000/- (Rs.1,000 X 30% of disability) by fixing Rs.1,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is just and reasonable. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Therefore, the appellant is entitled to a sum of Rs.10,000/- each towards attendant charges and loss of amenities.

9.The Tribunal has awarded meagre amount of Rs.5,000/- altogether towards traveling expenses & extra nourishment and Rs.5,000/- towards pain and suffering. Considering the nature of injuries and period of treatment taken by the appellant, the same are enhanced to Rs.5,000/- towards traveling expenses, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards pain and suffering. 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.	Disability	30,000/-	30,000/-	confirmed
2.	Pain and suffering	5,000/-	10,000/-	enhanced
3.	Loss of income and earning power	6,000/-	25,200/-	enhanced
4.	Medical expenses	2,000/-	2,000/-	confirmed
5.	Traveling expenses and extra nourishment	5,000/-	5,000/- 10,000/-	enhanced
6.	Attendant charges	-	10,000/-	granted
7.	Loss of amenities	-	10,000/-	granted

Total	Rs.48,000/-	Rs.1,02,200/-	enhanced by Rs.54,200/-
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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.48,000/- is hereby enhanced to Rs.1,02,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd 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.701 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Puducherry. 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 petition before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

To

1. The Motor Accidents Claims Tribunal,
Principal Sub-Judge,
Puducherry.

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

+1 CC to Mr.T.R. Rajaraman, Advocate sr 17302.

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C.M.A.No.505 of 2017

MP (CO)
SP (12/02/2021)