

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.90 of 2017

S.Kaliammal

.. Appellant/Petitioner

Vs.

1.Kuppusamy

2.A.Somasundaram

3.Shriram General Insurance Company Limited,

Having Office at

V.C.T.V Main Road,

Sathy Road,

Erode Taluk & District.

.. Respondents/Respondents

(Respondents 1 and 2 are remained exparte before the Tribunal)
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.04.2015 made in M.C.O.P.No.368 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Erode.

For Appellant : Mr.D.Lakshmipathy

For Respondents: Mr.S.Dhakshnamoorthy for R3
R1 and R2 - Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 22.04.2015 made in M.C.O.P.No.368 of 2013 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

2.The appellant is claimant in M.C.O.P.No.368 of 2013 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Erode. She filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by her in the accident that took place on 26.09.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the first respondent, driver of

the tipper lorry belonging to the second respondent and directed the third respondent being insurer of the said vehicle to pay a sum of Rs.9,26,425/- 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 the appellant suffered grievous injuries in all over the body and P.W.2/Doctor has assessed the disability of the appellant as 38%. The Tribunal erroneously reduced the same to 35% stating that P.W.2 is not the doctor who treated the appellant. The amount awarded by the Tribunal for disability is meagre. Due to the injuries, the appellant has lost her earning capacity and the Tribunal ought to have adopted multiplier method for awarding compensation towards permanent disability. The appellant has taken treatment as in-patient for more than 40 days from 28.09.2012 to 12.12.2012. The Tribunal has failed to award any amount towards attendant charges, loss of amenities and damage to clothes. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6. Per contra, learned counsel appearing for the third respondent/ Insurance Company contended that the appellant has not proved that due to injuries she suffered functional disability, she lost earning capacity and she could not do the work as she was doing earlier. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. P.W.2/Doctor is not the doctor who treated the appellant. Hence, the Tribunal rightly reduced the percentage of disability to 35% and awarded compensation. The appellant is not entitled to compensation towards attendant charges, loss of amenities and loss of cloth and the total compensation awarded by the Tribunal under different heads are not meagre 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 3rd respondent / Insurance Company and perused all the materials available on record.

8. From the materials available on record, it is seen that the appellant has produced Ex.P17/disability certificate issued by Doctor to show that she suffered 38% disability. The Tribunal has reduced the same to 35% on the ground that P.W.2 is not the doctor who treated the appellant and awarded a sum of Rs.2,000/-

per percentage of disability. The reason given by the Tribunal is not proper. Considering the evidence of P.W.2/Doctor, the appellant is entitled to compensation for 38% disability. The appellant has not proved that she suffered functional disability and there is loss of earning capacity. Therefore, the percentage method adopted by the Tribunal is proper. But the amount awarded by the Tribunal per percentage of disability is meagre. The accident is of the year 2012 and a sum of Rs.1,14,000/- (Rs.3,000/- X 38%) is awarded towards disability by awarding Rs.3,000/- per percentage of disability. Considering the nature of injuries and the period of treatment taken by the appellant, a sum of Rs.50,000/- awarded by the Tribunal towards pain and sufferings is enhanced to Rs.75,000/-. The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and the same are enhanced to Rs.15,000/- and Rs.50,000/- respectively. The appellant has taken treatment as in-patient for more than 40 days from 28.09.2012 to 12.12.2012. The Tribunal has not granted any amount towards attendant charges. A sum of Rs.40,000/- is granted towards attendant charges. Considering the nature of injuries, a sum of Rs.25,000/- towards loss of amenities and Rs.3,000/- towards loss of clothes are also awarded. The amount awarded by the Tribunal for medical expenses is just and reasonable and hence, the same is 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.	Transportaion	5,000/-	15,000/-	Enhanced
2.	Extra nourishment	10,000/-	50,000/-	Enhanced
3.	Medical expenses	7,91,425/-	7,91,425/-	Confirmed
4.	Pain and sufferings	50,000/-	75,000/-	Enhanced
5.	Disability	70,000/-	1,14,000/-	Enhanced
6.	Attendant charges	-	40,000/-	Granted
7.	Loss of amenities	-	25,000/-	Granted
8.	Loss of clothes	-	3,000/-	Granted
	Total	9,26,425/-	11,13,425/-	Enhanced by Rs.1,87,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.9,26,425/- is enhanced to Rs.11,13,425/- along with interest and costs. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant shall not be entitled to any interest for the delay period in filing the appeal on Rs.1,87,000/-, the amount now enhanced by this Court as per the order of this Court dated 04.01.2017 made in C.M.P.No.10051 of 2016 in C.M.A.(SR)No.44551 of 2016. The third 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Special Subordinate Court,
The Motor Accident Claims Tribunal,
Erode.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.S.Dhakshnamoorthy, advocate, sr.1828

+1 cc to Mr.M.Guruprasad, Advocate, sr.2851

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