

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4840 of 2019

Sreevidhya

.. Appellant/Claimant

Vs.

1.D.Augustine Antony

2.Ravishankar

3.National Insurance Company Ltd.  
Palaniappa complex  
Mettur road  
Erode.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2018 made in M.C.O.P.No.80 of 2016 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.R.Nalliyappan

For R3 : Mr.J.Chandran

R1&R2 Exparte in the Tribunal

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 10.01.2018 made in M.C.O.P.No.80 of 2016 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellant is claimant in M.C.O.P.No.80 of 2016 on the file of Motor Accident Claims Tribunal, Sub Court, Perundurai. She filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by her in the accident that took place on 28.10.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent driving by the 1<sup>st</sup> respondent, driver of the lorry belonging to the 2nd respondent and directed the 3rd respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.20,29,500/- 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/claimant contended that the appellant was working in a petrol bunk and was earning a sum of Rs.15,000/- per month. The Tribunal without considering the same, fixed only a meagre sum of Rs.6,000/- as monthly income of the appellant. Due to the accident, the appellant sustained multiple rib fractures, liver and spinal injuries, right leg crush injury and was amputated. The appellant underwent several surgeries for removal of infected and septic skin, tissues, tissue and skin grafting were performed. The appellant has taken continuous treatment. The amounts awarded by the Tribunal towards pain and suffering, transportation, attendant charges, fixing artificial leg, future medical expenses and loss of marital prospects are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that the total compensation awarded by the Tribunal is excessive. The appellant has not made out any case for enhancement of compensation 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 and perused all the materials available on record.

8. It is the contention of the appellant that she was aged 26 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as Sales girl in Kumar Petroleum, Neelambur. She failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the appellant. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meagre and hence, a sum of Rs.9,000/- is fixed as monthly income of the appellant. The Tribunal has not granted any enhancement towards future prospects. The appellant was aged 26 years at the time of accident and she is entitled to 40% enhancement towards future prospects. By applying multiplier 17, a sum of Rs.25,70,400/- (Rs.9,000/- + 3600 [Rs.9,000/- X 40%] X 12 X 17) is awarded towards permanent disability. The amounts awarded by the Tribunal under all the other heads are just and

reasonable and hence, the appellant is not entitled to any enhancement under other heads.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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.     | Permanent disability           | 12,24,000                       | 25,70,400                         | Enhanced                                          |
| 2.     | Transportation                 | 25,000                          | 25,000                            | Confirmed                                         |
| 3.     | Extra nourishment              | 25,000                          | 25,000                            | Confirmed                                         |
| 4.     | Attendant charges              | 75,000                          | 75,000                            | Confirmed                                         |
| 5.     | Pain and suffering             | 1,00,000                        | 1,00,000                          | Confirmed                                         |
| 6.     | Future loss and mental agony   | 50,000                          | 50,000                            | Confirmed                                         |
| 7.     | Medical expenses               | 78,000                          | 78,000                            | Confirmed                                         |
| 8.     | Future medical expenses        | 1,00,000                        | 1,00,000                          | Confirmed                                         |
| 9.     | Fixing artificial leg          | 3,00,000                        | 3,00,000                          | Confirmed                                         |
| 10.    | Loss of marital prospects      | 50,000                          | 50,000                            | Confirmed                                         |
| 11.    | Damage to clothes and articles | 2,500                           | 2,500                             | Confirmed                                         |
|        | Total                          | 20,29,500                       | 33,75,900                         | Enhanced by Rs.13,46,400/-                        |

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.20,29,500/- is hereby enhanced to Rs.33,75,900/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay

necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period on the enhanced amount of Rs.13,46,400/- as per the order of this Court dated 12.12.2019 made in C.M.P.No.26411 of 2019 in C.M.A.SR.No.15240 of 2019. The 3rd 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 Subordinate Judge  
The Motor Accident Claims Tribunal  
Perundurai.

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

+1cc to Mr.R.Nalliyappan, Advocate, in SR.7488  
+1cc to Mr.J.Chandran, Advocate in SR.7783

C.M.A.No.4840 of 2019

VBA (CO)  
RV (11/09/2020)

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