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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1072 OF 2016

Susama Varghese

... Appellant/Claimant

Versus

1. M/s.Suraj Travel Solutions,
B.S.Mookambika Complex,
No.4, Lady Desikachari Road,
Mylapore,
Chennai - 600 004.
2. The Branch Manager,
National Insurance co., Ltd.,
T.P. Bub, No.751, IIIrd Floor,
Anna Salai,
Chennai - 600 002.
Now at:
No.46, Moor Street,
Chennai - 600 001.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, for enhancement of the compensation amount awarded in the judgement and Decree dated 07.01.2016, made in M.C.O.P.No.5747 of 2012 on the file of the learned Motor Accident Claims Tribunal (Special Subordinate Judge No.1 to deal with MCOP Cases), Chennai.

For Appellant : Mr.Harish
For Mr.N.Manokaran

For Respondents : Mr.V.Murali
For M/s.J.Chandran
For R2

R1 - Served
No appearance



JUDGMENT

(Heard Video Conference)

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This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 07.01.2016 passed by the Motor Accident Claims Tribunal, Special Sub Court No.I, dealing with MCOP cases, Chennai in M.C.O.P.No.5747 of 2012.

2. The appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

3. The details of the compensation awarded by the Tribunal to the appellant/claimant are as follows :-

Heads	Amount awarded by the Tribunal (Rs.)
Pecuniary Damages	
Expenses relating to treatment, hospitalization and medicines	1387459
Loss of earning during treatment	60000
Expenses towards conveyance	10000
Extra nourishment cost	15000
Attender charges	96000
Damages to clothing and articles	2000
Compensation for disability	442000
Non Pecuniary damages	
Pain and sufferings	50000
Compensation for loss of future amenities and marriage prospectus	25000
Total	2087459

4. Heard Mr.V.Harish, learned counsel for the appellant/claimant and Mr.V.Murali, learned counsel for the 2nd respondent/Insurance Company. Despite service of notice on the first respondent, there is no appearance on his side.

5. This Court has perused the materials and evidence available on record before the Tribunal.



6. The appellant/claimant sustained the following injuries as a result of an accident which happened on 13.07.2012 caused by a vehicle owned by the first respondent and insured with the second respondent/Insurance Company :

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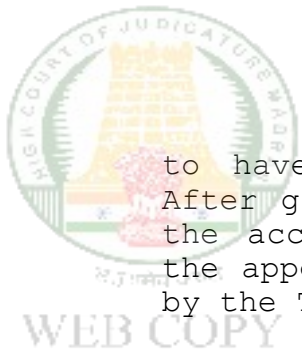
"Fracture of right parietal bone, committted fracture of right HEMI sancrumwith displacement of Fragments to Anal Canal, compression of Neural Foramen, Fracture Bilateral superior & Inferior public rami, fracture of Transverse process of L2, L3, L4, L5 Vertebrae and right Sacral Ala.

7. The appellant/claimant has also undergone surgery "Tracheostomy Retracheostomy, Surgery on Pelvis-isolated screw fixation of right sacrum, Screw removal developed lumbal canal stenosis, radiculopathy (weakness on both lower limbs right, right limb more weak than left), surgery laminectomy L5-S1 Bony spur trimmed as S1 root, Traimcinalone injection" and she has taken treatment as an inpatient in Global Health City Hospital, Chennai for two spells i.e. for the period from 13.07.2012 to 15.09.2012 and from 06.03.2014 to 10.03.2014, totally for a period of 69 days.

8. The cause of the accident as well as the nature of injuries sustained by the appellant/claimant are not disputed by the second respondent/Insurance Company before this Court as no appeal has also been filed by the Insurance Company as against the impugned award and the findings of the Tribunal with regard to the nature of injuries as well as the cause of the accident has attained finality.

9. The only question that arises for consideration is whether the quantum of compensation awarded by the Tribunal to the appellant/claimant is a just compensation or not and whether the appellant/claimant is entitled for enhancement of compensation or not.

10. The appellant/claimant was a Tailor by profession, which is also not disputed by the respondents before the Tribunal. The accident happened on 13.07.2012. The appellant/claimant was hospitalised on two occasions. One during the period from 13.07.2012 to 15.09.2012 and the other for the period from 06.03.2014 to 10.03.2014 for a total period of 69 days and the same has also not been disputed by the respondents. The Tribunal under the impugned award has assessed the notional monthly income of the appellant/claimant at Rs.5,000/-. This Court is of the considered view that if the year of the accident was taken into the consideration and the avocation of the appellant/claimant was also taken into consideration, the Tribunal ought



to have fixed the notional monthly income at a higher sum. After giving due consideration to the avocation and the year of the accident, this Court fixes the notional monthly income of the appellant/claimant at Rs.7,000/- instead of Rs.5,000/- fixed by the Tribunal.

11. Admittedly, the appellant/claimant was hospitalised for a period of 69 days and the nature of the injuries sustained by her is also grievous in nature. Therefore, this Court is of the considered view that the loss of income for a period of twelve months assessed by the Tribunal is a correct assessment.

12. The Tribunal has awarded a compensation of Rs.60,000/- towards loss of earning to the appellant/claimant during the period of her treatment calculated at Rs.5,000/-p.m. for a period of 12 months. Since the monthly income of the appellant/claimant is enhanced by this Court to Rs.7,000/-, the loss of earning to the appellant/claimant during the period of her treatment is enhanced to Rs.7,000/- x 12 = Rs.84,000/- instead of Rs.60,000/- fixed by the Tribunal.

13. The Tribunal has awarded a compensation of Rs.10,000/- towards transportation; Rs.15,000/- towards extra nourishment; Rs.96,000/-, attender charges; Rs.2,000/- towards damage to clothing and articles; Rs.50,000/- towards pain and suffering and Rs.25,000/- towards compensation for loss of future amenities and marital prospects, which in the considered view is a just compensation and there is no scope for any enhancement under those heads and therefore, the same is confirmed by this Court.

14. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pecuniary Damages		
Expenses relating to treatment, hospitalization and medicines	1387459	1387459
Loss of earning during treatment	60000	84000
Expenses towards conveyance	10000	10000
Extra nourishment cost	15000	15000
Attender charges	96000	96000



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Damages to clothing and articles	2000	2000
Compensation for disability	442000	619080
Non Pecuniary damages		
Pain and sufferings	50000	50000
Compensation for loss of future amenities and marriage prospectus	25000	25000
Total	2087459	2288539
Total amount rounded off by this Court	-	2300000

15. In the result, the appeal filed by the appellant/claimant, stands partly allowed by enhancing the compensation from Rs.20,87,459/- to Rs.23,00,000/-, as indicated above. No costs.

16. The second respondent/Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.5747 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with MCOP Cases), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

vsi2



To

The Special Judge No.I,
Special Sub Court No.1 to deal with MCOP Cases,
Motor Accident Claims Tribunal,
Chennai.

Copy To:-

The Section Officer,
V.R. Section,
High Court,
Madras - 104.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.42614
+1cc to M/s.J.Chandran, Advocate, S.R.No.43117

C.M.A.NO.1072 OF 2016

AJS (CO)
PBS/16/11/2021