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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1199 of 2016

Kanaga

...Appellant / Petitioner

versus

1.S.Poopandian

R1- already set exparte in lower Court
R1 - notice may be dispense with)

2.The United India Insurance Co. Ltd.,
No.127/A, 1st Floor, Trunk Road,
Poonamallee,
Chennai - 56.

...Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and award dated 03.08.2015 and made in M.C.O.P. No.220 of 2014 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee.

For Appellant : Ms.S. Jeyanthi
for Mr.J.Mahalingam

For Respondents : Mr.P.Sankaranarayanan for R2
R1 - Exparte

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.08.2015 passed by the Motor Accident Claims Tribunal, III Additional District Court, Thiruvallur in MCOP No.220 of 2014.

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 under the impugned award are as follows :



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Heads	Amount awarded by the Tribunal (Rs.)
Disability compensation Rs.2,000 x 20%	40,000
Pain and suffering	20,000
Transportation	5,000
Extra nourishment	5,000
Loss of income for one month	4,500/-
Total	74,500/-

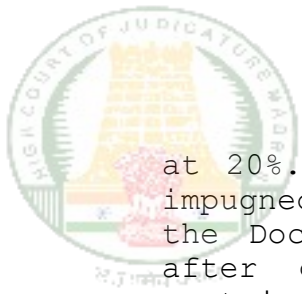
4. Heard Ms. S.Jayanthi, learned counsel for the appellant / claimant and Mr.P.Sankaranarayanan, learned counsel for the 2nd respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant sustained the following injuries as a result of an accident on 01.11.2013 caused by a vehicle, owned by the first respondent and insured with the second respondent. The cause of the accident has not been disputed by the respondents. The appellant / claimant was a Cook, aged 42 years at the time of the accident. In the claim petition, she has pleaded that she was earning Rs.8,000/- p.m.. However, the Tribunal has assessed her monthly income only at Rs.4,500/-, which in the considered view of this Court is too low and not in accordance with the settled practice. Since, the accident happened in the year 2013, even though no documentary evidence was produced by the appellant / claimant before the Tribunal to substantiate her monthly income, it is settled practice that for an accident of the year 2013, the notional monthly income is fixed at Rs.8,000/-. Accordingly, this Court fixes the notional monthly income at Rs.8,000/- instead of Rs.4,500/- erroneously fixed by the Tribunal.

7. The Tribunal has awarded a compensation of Rs.4,500/- to the appellant / claimant towards loss of income for the period of her treatment calculated for a period of one month. Since, the monthly income of the appellant / claimant is enhanced from Rs.4,500/- to Rs.8,000/- by this Court, the loss of income to the appellant / claimant during the period of treatment is enhanced to Rs.8,000/- calculated for a period of one month.

8. The Doctor (PW2) has assessed the disability of the appellant / claimant at 25%, as seen from Ex.P5. However, the Tribunal on its own without any basis has fixed the disability



at 20%. No reasons have been given by the Tribunal under the impugned award for reducing the disability to 20% even though the Doctor (PW2) has assessed the same at 25%. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant as indicated supra fixes the disability of the appellant / claimant at 25% as assessed by the Doctor (PW2).

9. The Tribunal has awarded a disability compensation of Rs.40,000/-, which in the considered view of this Court is low. If the year of the accident was duly considered by the Tribunal, the disability compensation would have been assessed at a higher sum. It is settled practice that for an accident of the year 2013, the disability compensation is calculated at Rs.3,000/- per percentage of disability. Accordingly, this Court fixes the disability compensation at Rs.75,000/- calculated at Rs.3,000/- per percentage of disability for the 25% disability assessed by this Court instead of Rs.40,000/- erroneously fixed by the Tribunal.

10. The Tribunal has failed to award any compensation towards loss of amenities and medical expenses, which the appellant / claimant is legally entitled to. After giving due consideration to the nature of the injuries sustained by her, this Court awards a compensation of Rs.10,000/- towards loss of amenities and another sum of Rs.10,000/- towards medical expenses.

11. The Tribunal has awarded a compensation of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and another sum of Rs.5,000/- towards transportation, which in the considered view of this Court cannot be considered to be inadequate as alleged by the appellant / claimant and therefore, the same is confirmed by this Court.

12. 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.)
Disability compensation *Rs.2,000 x 20% # Rs.3,000 x 25%	40,000/- *	75,000/- #
Pain and suffering	20,000	20,000/-
Transportation	5,000	5,000/-
Extra nourishment	5,000	5,000/-
Loss of income for one month	4,500/-	8,000/-

