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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 221 of 2020

Munira Begum

...Appellant/Petitioner

Vs

1. Askar Ali

2. TATA AIG Insurance Company Ltd.,
No.1, Eathiraj Salai,
Egmore, Chennai-600 008.

3. K.Sheik Abdullah

...Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 20.06.2019 made in MACT.O.P.No.7498 of 2013, on the file of the III Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant	: Mr. K. Ayyadurai
For R1	: Mr.M. Suresh Pandian
For R2	: Mr. E. Rajadurai for Mr. N.Vijayaraghavan
For R3	: Served, No Appearance

JUDGMENT

Not satisfied with the quantum of compensation, awarded by the Tribunal, under the impugned award dated 20.06.2019 in MACTOP .No. 7498 of 2013 passed by the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai, the claimant has preferred the present appeal, seeking enhancement.

2. The Tribunal under the impugned award directed the respondents 2 and 3 to pay a compensation of Rs.4,49,130/- (Rupees Four Lakhs Forty Nine thousand One hundred thirty only) with interest to the appellant/claimant as detailed here under:-



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Heads	Amount awarded by the Tribunal (Rs.)
Pain and Sufferings	20,000/-
Transport and Extra Nourishment	10,000/-
Loss of Earning capacity	3,85,560/-
Attender Charges	9,000/-
Loss of Amenities	10,000/-
Medical Expenses	14,569/-
Total	4,49,129/-

Rounded off to Rs.4,49,130/-

3. The Tribunal directed the second respondent Insurance Company to pay the compensation to the claimant with liberty to recover the same from the third respondent.

4. The appellant/claimant, in the claim petition filed before the Tribunal, has pleaded that she was working as a cook in Government Muslim Higher Secondary School and was earning a sum of Rs.4,500/- per month. The accident occurred on 26.03.2013.

5. The cause of the accident has not been disputed by the respondents as no appeal has been filed by the respondents.

6. The only issue that arises for consideration is that whether the compensation, awarded by the Tribunal, can be enhanced in favour of the appellant/claimant.

7. The appellant/claimant was a Cook in a Government School, earning a sum of Rs.4,500/- (Rupees Four thousand five hundred only) per month. She was aged 28 years at the time of accident. The Tribunal has accepted the claim of the appellant/claimant and fixed the notional monthly income at Rs.4,500/- (Rupees Four thousand five hundred only). This Court agrees with the said assessment as the accident happened in the year 2013. The appellant/claimant has sustained the following injuries:

- a) Subtrochantric Fracture of Right Femur
- b) Fracture of Both Bone Right Leg middle 1/3
- c) Fracture of Zygome on right side
- d) Fracture of Infraauricular margin on Right



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- e) Fracture of Anterior Postentlateral Wall of Right maxilla
- f) Fracture of Anterior Postentlateral Wall of Left Maxilla
- g) Fracture of Symphysis of Mandible
- h) Loss of 7 lower teeth
- i) Facial Injury and Multiple Injuries throughout her body.

8. The Medical Board, Government Royapettah Hospital, Chennai has assessed permanent disability of the appellant/claimant at 30%. The appellant/claimant was hospitalised from 26.03.2013 to 07.05.2013; from 28.05.2013 to 04.06.2013 and 05.11.2013 to 10.12.2013 and surgery was conducted on 24.04.2013, 30.05.2013 and 04.12.2013. The nature of injuries sustained by the appellant/claimant and the period of hospitalisation have not been disputed by the respondents before the Tribunal.

9. The Tribunal has adopted the multiplier method for the purpose of assessing loss of earning capacity of the appellant/claimant. The Tribunal has awarded future prospects to the appellant/claimant.

10. The Tribunal has assessed loss of earning capacity at Rs.3,85,560/- by adopting the correct multiplier of "17".

11. Insofar as the compensation awarded by the Tribunal under the other heads viz., pain and suffering, transport charges and extra nourishment, loss of amenities, attender charges are concerned, the same will have to be enhanced.

12. If due consideration is given to the nature of injuries sustained by the appellant/claimant and the period of hospitalisation, this Court is of the considered view that the compensation awarded by the Tribunal towards pain and suffering has to be enhanced from Rs.20,000/- to Rs.50,000/- (Rupees Fifty thousand only); towards Transport and extra nourishment, it has to be enhanced from Rs.10,000/- to Rs.50,000/-; towards attender charges - enhanced from Rs.9,000/- to Rs.30,000/-, towards loss of amenities enhanced from Rs.10,000/- to Rs.50,000/-.

13. Insofar as the compensation awarded by the Tribunal towards medical bills is concerned, they are supported by medical bills, produced by the appellant and the same is confirmed by this Court.



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14. The Tribunal has failed to award any compensation towards loss of income during the treatment period. It is seen from the records that the appellant/claimant was unable to do her regular avocation for a period of six months. After considering the nature of injuries sustained by the appellant/claimant and the long period of hospitalisation, this Court is of the considered view that since the monthly income of the appellant/claimant has been assessed as Rs.4,500/-, the loss of income during the treatment period of six months is assessed at Rs.27,000/- (Rs.4,500 x 6 = 27,000).

15. The Tribunal failed to award any amount towards disfigurement, loss of teeth and future medical expenses. This Court is of the considered view that the Tribunal ought to have granted compensation under the above heads in favour of the claimant.

16. After giving due consideration of the nature of injuries sustained by the appellant/claimant and the period of hospitalisation, this Court awards compensation of Rs.25,000/- towards disfigurement; Rs.21,000/- towards loss of 7 teeth (Rs.3,000 x 7) and Rs.20,000/- towards future medical expenses.

17. The compensation awarded by the Tribunal is modified as under by enhancing from Rs.4,49,130/- (Rupees Four Lakhs forty nine thousand one hundred thirty only) to Rs.6,73,129/- (Rupees Six Lakhs Seventy three thousand one hundred twenty nine only)

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Pain and Suffering	20,000/-	50,000/-	Enhanced
Transport Charge & Extra Nourishment	10,000/-	50,000/-	Enhanced
Loss of earning capacity	3,85,560/- 6,300x 12x17x 30%	3,85,560 /-	Confirmed
Attender charges	9,000/-	30,000/-	Enhanced
Loss of amenities	10,000/-	50,000/-	Enhanced
Medical Expenses	14,569/-	14,569/-	Confirmed



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Loss of Income (during treatment period)	-	27,000/-	Granted
Disfigurement	-	25,000/-	Granted
Loss of Teeth	-	21,000/-	Granted
Future Medical Expenses	-	20,000/-	Granted
Total	4,49,130/-	6,73,129 /-	Enhanced

18. Admittedly, as seen from the evidence available on record, the driver of the insured vehicle was not possessing a valid driving licence. The Tribunal has given due consideration to the said fact and rightly ordered pay and recovery rights to the second respondent which is confirmed by this Court.

19. In the result, this appeal is partly allowed and pay and recovery rights is granted to the second respondent/ Insurance Company. The 2nd respondent/Insurance Company is directed to deposit the compensation amount awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.7498 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.7498 of 2013 to the bank account of the claimant through RTGS within a period of one week thereafter.

20. The second respondent/ Insurance Company is granted the right to recover the same from the third respondent by adopting the procedure established under law. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar



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To

1. Motor Accidents Claims Tribunal,
III Small Causes Court, Chennai

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

+1 CC to Mr.K. Ayyadurai, Advocate sr 50663.

C.M.A. No. 221 of 2020

PVS (CO)
SP(09/12/2021)