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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1308 of 2016

Mahalakshmi Ratan

...Appellant/Petitioner

Versus

1. Imtiaz Sait

(1st respondent exparte in the Tribunal.
Hence notice to 1st respondent in the
above appeal may be dispensed with)

2. The United India Assurance Co. Ltd.,
No.58, Purasaivakkam High Road,
Chennai

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 20.09.2012 in MCOP No.3290 of 2008 on the file of the Motor Accidents Claims Tribunal (In the Court of XVI Additional Judge, Chennai).

For Appellant

: Ms.Ramya V. Rao

For Respondents

: Mr.D. Baskaran for R2
not ready in notice
reg. R1

JUDGMENT

(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 20.09.2012 passed by the Motor Accidents Claims Tribunal, XVI Additional Court, Chennai in MCOP No. 3290 of 2008.

2. The Motor Accident Claims Tribunal, XVI Additional Judge, Chennai under the impugned award directed the respondents to pay the appellant / claimant a total compensation of Rs.4,17,590/- together with interests and costs as detailed hereunder :



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Heads	Amount awarded by the Tribunal (Rs.)
Compensation for 70% disablement	114000
Compensation for loss of income	100000
Compensation for pain and suffering	50000
Medical bills	123590
Transport, expenses on attender and extra nourishment	30000
Total	4,17,590

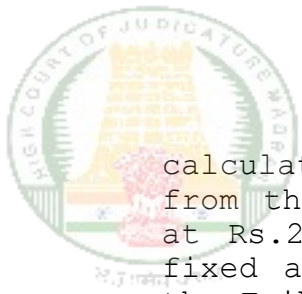
3. Heard Ms.Ramya V. Rao, learned counsel for the appellant / claimant and Mr.D. Baskaran, learned counsel for the 2nd respondent / Insurance Company. R1 was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

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

5.The appellant / claimant sustained the following injuries on 22.12.2006 as a result of accident caused by a vehicle owned by the first respondent and insured with the second respondent / Insurance Company :

"Fracture both bones right leg and head injuries. Surgeries were also performed on the appellant / claimant and implants were done for Fracture Fibula".

6. The appellant / claimant was hospitalised for a period from 22.12.2006 to 06.01.2007. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondents before the Tribunal. The Orthopedician, who examined the appellant / claimant assessed her disability for her fracture at 45%. He was also examined as a witness before the Tribunal as PW2. The general physician, who examined the appellant /claimant has assessed his disability for his head injuries at 50%. He was also examined as a witness before the Tribunal as PW3. The Tribunal after giving due consideration to the disability certificates issued by the Orthopedician and general physician, which were marked as Exs.P18 and P20 before the Tribunal assessed the disability of the appellant / claimant at 70% and awarded the disability compensation of Rs.1,14,000/-,



calculated at Rs.2,000/- per percentage of disability. As seen from the calculation, the disability compensation if calculated at Rs.2,000/- per percentage of disability ought to have been fixed at Rs.1,40,000/- but however due to a calculation error, the Tribunal has assessed the same at Rs.1,14,000/-. Hence, the same is modified by this Court and the disability compensation for the appellant / claimant is fixed at Rs.1,40,000/-. However, this Court does not find any infirmity in the assessment made by the Tribunal with regard to the disability of the appellant / claimant.

7. The Tribunal under the impugned award has awarded a compensation of Rs.1,00,000/- towards loss of income; Rs.50,000/- towards pain and suffering; Rs.1,23,590/- towards medical expenses based on the oral and documentary evidence, which is confirmed by this Court.

8. However, the Tribunal has erroneously awarded a lesser compensation towards conveyance expenses, Extra nourishment and attender charges amounting to Rs.30,000/- , which has to be necessarily enhanced by this Court and the same has to be awarded under separate heads of transportation, attender charges and extra nourishment. This Court therefore, after giving due consideration to the nature of injuries sustained by the appellant / claimant and his period of hospitalisation as well as the disability suffered by her is of the considered view that she will have to be paid a compensation of Rs.15,000/- towards conveyance expenses, Rs.20,000/- towards attender charges and Rs.15,000/- towards extra nourishment charges instead of the consolidated sum of Rs.30,000/- fixed by the Tribunal.

9. The Tribunal has also failed to award any compensation towards loss of amenities, future medical expenses and damage to clothing, which she is legally entitled to. This Court after giving due consideration to the aforementioned factors awards a compensation of Rs.15,000/- towards loss of amenities; Rs.10,000/- towards future medical expenses and Rs.2,000/- towards Damages to clothing.

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



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Compensation for 70% disablement * calculation error # Rs.2,000/- per percentage of disability x 70%	114000 *	140000 #
Compensation for loss of income	100000	100000
Compensation for pain and suffering	50000	50000
Medical bills	123590	123590
Transport, expenses on attender and extra nourishment ----- ----- Conveyance expenses Attender charges Extra nourishment	30000	15000 20000 15000
Loss of amenities	-	50000
Future medical expenses	-	10000
Damages	-	2000
Total	4,17,590	5,25,590

11. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.4,17,590/- to Rs.5,25,590/-, as indicated above. No costs.

12. 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 MCOP No.3290 of 2008 on the file of the Motor Accidents Claims Tribunal (In the Court of XVI Additional Judge, 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 before receiving the copy of this Judgment.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2
To

The XVI Additional Judge,
Motor Accidents Claims Tribunal
Chennai.

Copy to

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

+1cc to M/s.A.N.Viswanatha Rao, Advocate Sr.28806

CMA No.1308 of 2016

rp[co]
srg 04/10/2021