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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1862 of 2016

Divya

... Appellant/Petitioner

..Vs..

1.M.Nataraj

2.National Insurance Company Ltd,
(Motor Third Party Cell),
751, Anna Salai, 3rd Floor,
Chennai - 600 002.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.05.2015 made in MACTOP.No.7812 of 2012 on the file of the Motor Accidents Claims Tribunal and III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja

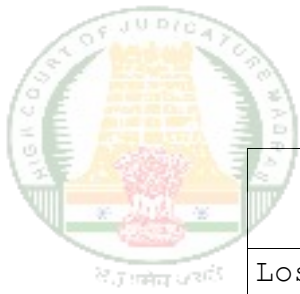
For Respondent 2 : Mr.D.Nadhamuni
R1 - Expate

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 30.01.2015 passed by the Motor Accident Claims Tribunal (Third Court of Small Causes, Chennai) in MCOP.No.7812 of 2013.

2. Heard Mr.F.Terry Chellaraja, learned counsel for the Appellant/claimant and Mr.D.Nadhamuni, learned counsel for the second respondent/ Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this Appeal seeking for enhancement. The details of the compensation awarded by the Tribunal to the Appellant/claimant are as follows:



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Heads	Award Amount (Rs.)
Loss of Income	20,000/-
Transport to Hospital	7,000/-
Extra nourishment	7,000/-
Damage to clothing	500/-
Loss of amenities	15,000/-
Pain and suffering	25,000/-
Disability at 30% at Rs.2,000/- per percentage	60,000/-
Total	1,34,500/-

4. Before the Tribunal, the Appellant/claimant has filed nine documents which were marked as Ex.P1 to Ex.P9 and two witnesses were examined namely, the Appellant/claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the second respondent Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

5. As a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent Insurance Company, the Appellant/claimant has sustained the following injuries, viz., bimalleolar fracture at right ankle, severe head injury and multiple injuries all over the body.

6. The Doctor (PW2) who examined the Appellant/claimant has assessed the disability of the Appellant/claimant at 45% and has deposed that the fracture is malunited at right ankle, screws for malleolar and fibula plate fixed, only 10 degrees movements possible at right ankle and she cannot squat, walk and that is why, she is limping. The nature of injuries sustained by the Appellant/claimant have not been disputed by the second respondent before the Tribunal. However, the Tribunal on its own, without any basis has reduced the percentage of disability to 30% and no reasons have been given by the Tribunal for the reduction of the disability of the Appellant/claimant. After giving due consideration to the injuries sustained by the Appellant/claimant as indicated supra, this Court is of the considered view that the disability assessed by the Doctor (PW2) will have to be accepted by this Court. Accordingly, the disability of the Appellant/claimant is fixed at 45% by this Court instead of 30% fixed by the Tribunal.

7. The accident happened on 12.09.2013. The Tribunal has awarded Rs.60,000/- towards the disability compensation to the Appellant/claimant calculated at Rs.2,000/- per percentage of



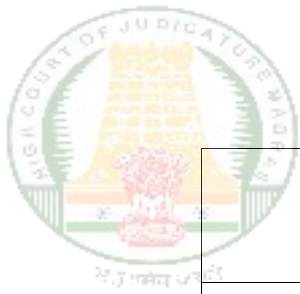
disability which in the considered view of this Court is too low and it has to be enhanced. After giving due consideration to the year of the accident, this Court enhances the disability compensation to the Appellant/claimant to Rs.1,35,000/- calculated at Rs.3,000/- per percentage of disability for 45% disability from Rs.60,000/- calculated at Rs.2,000/- per percentage of disability for 30% disability.

8. The Tribunal has awarded a sum of Rs.20,000/- towards loss of income to the Appellant/claimant. The Appellant/claimant before the Tribunal has filed her salary certificate which was marked as Ex.P4 and loss of pay certificate which was marked as Ex.P5. As seen from the aforementioned documents, the Appellant/claimant was earning Rs.12,803/- per month at the time of the accident. The loss of pay certificate (Ex.P5) also reveals that the Appellant/claimant has suffered loss of income Rs.40,000/-. However without any basis, the Tribunal has reduced the loss of income to Rs.20,000/-. This Court is of the considered view that when the Appellant/claimant has filed documentary evidence to show that the Appellant/claimant has suffered loss of pay of Rs.40,000/- as seen from Ex.P5, the Tribunal ought not to have reduced the same to Rs.20,000/-. Therefore, this Court fixes the loss of income at Rs.40,000/- instead of Rs.20,000/- fixed by the Tribunal.

9. With regard to the compensaion awarded by the Tribunal under various other heads are concerned, this Court is of the considered view that the same is a just compensation and there is no scope for interference.

10. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.2,29,500/- from Rs.1,34,500/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Income	20,000/-	40,000/-
Transport to Hospital	7,000/-	7,000/-
Extra nourishment	7,000/-	7,000/-
Damage to clothing	500/-	500/-
Loss of amenities	15,000/-	15,000/-
Pain and suffering	25,000/-	25,000/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Disability at 30% at Rs.2,000/- per percentage	60,000/-	1,35,000/-
Total	1,34,500/-	2,29,500/-

Conclusion:

11. In the result, this appeal shall stand partly allowed. The Second Respondent Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.2,29,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of MCOP.No.7812 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 is directed to transfer the amount lying to the credit of MCOP.No.7812 of 2013 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant before receiving the copy of this Judgment. No costs.

Sd/-

Deputy Registrar (ADMN III)

//True Copy//

Sub Assistant Registrar

Nl

To

1.The III Court of Small Causes,
Chennai.

2.The Section Officer
V.R.Section, High Court of Madras.

+1cc to Mr.M.Malar, Advocate, S.R.No.28857

C.M.A.No.1862 of 2016

CNR (CO)
GN (16/11/2021)