IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.801 & 1654 of 2015

CMA.No.801 of 2015

New India Assurance Co., Ltd.,
Motor Third Party Claims Hub,
No.45, Moore Street, 5th Floor,
Chennai - 600 001. ... Appellant/2nd Respondent

..Vs..

1.M.Priya ...1st Respondent/Petitioner

2.K.Sree Ramulu Naidu ...2nd Respondent/Respondent I

CMA.No.1654 of 2015

M.Priya ... Appellant/Petitioner

..Vs..

1.K.Sree Ramulu Naidu

2.New India Assurance Co., Ltd.,
Motor Third Party Claims Hub,
No.45, Moore Street, 5th Floor,
Chennai - 600 001. ... Respondents 1 & 2/Respondents 1 & 2

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Common Judgment and Decree passed in MCOP.No.1978 of 2012 on 31.10.2014 on the file of the learned Motor Accident Claims Tribunal (Small Causes Court - II Judge) at Chennai District.

For Appellant in
CMA.No.801 of 2015
& R2 in CMA.No.1654
of 2015 : Mr.J.Chandran
For R1 in CMA.No.801 of 2015
& Appellant in CMA.No.
1654 of 2015 : Mr.F.Terry Chella Raja

COMMON JUDGMENT

CMA.No.801 of 2015 has been filed by the Insurance Company and CMA.No.1654 of 2015 has been filed by the claimant challenging the very same Award dated 31.10.2014 passed by the Motor Accident Claims Tribunal (Small Causes Court, Chennai) in MCOP.No.1978 of 2012.

2. Heard Mr.F.Terry Chella Raja, learned counsel for the claimants and Mr.J.Chandran, learned counsel appearing for the Insurance company.

3. The Insurance company has filed the appeal challenging the quantum of compensation awarded by the Tribunal, whereas the claimant has filed the appeal seeking for enhancement of compensation. The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Heads	Award Amount (Rs.)
Loss of earning capacity	12,96,000/- (10000 x 12 x 18 x 60%)
Transportation	15,000/-
Extra nourishment	25,000/-
Damage to clothes	1,000/-
Medical expenses	2,00,000/-
Attender charges	15,000/-
Pain and suffering	50,000/-
Loss of Amenities of life	35,000/-
Loss of prospects of marriage	75,000/-

Heads	Award Amount (Rs.)
Total	17,12,000/-

4. The claimant who is the appellant in CMA.No.1654 of 2015 was a XIth standard student when the accident happened on 02.03.2012. At the time of accident, she was aged 16 years and sustained the following injuries viz., (a) Fracture occipital bone, (b) Fracture of right temporal bone of the skull, (c) Mid ear fluid, (d) Sun Arachnoid hemorrhage, (e) Interspehericle Hemorrhage, (f) Hemorrhage contusion brain right and left frontal bone, (g) Post traumatic scqulae head ache, (h) Giddiness fainting attach, (i) Memory deficit (M2), (j) Right and left hand and leg power 4/5 because of bifrontal lobe affection and (k) Multiple injuries all over the body. The Doctor (PW2) who examined her has assessed the permanent disability of the claimant at 90%. However, the Tribunal for the purpose of assessing the compensation towards loss of earning capacity fixed the disability of the claimant at 60%. This Court after giving due consideration to the nature of injuries sustained by the claimant is of the considered view that the assessment of disability made by the Tribunal under the impugned Award is a correct assessment and does not call for any interference.

5. The Tribunal has adopted the multiplier method for assessing the loss of earning power of the claimant. Based on the judgment of the Hon'ble Supreme Court in the case of Megala vs. Malathi and another reported in 2014 ACJ page 1441 the Tribunal has fixed the notional monthly income of the claimant at Rs.10,000/-. In the above referred case also, the claimant was a student and therefore, this Court is of the considered view that assessment of notional monthly income of the claimant at Rs.10,000/- by the Tribunal cannot be considered to be excessive as alleged by the Insurance Company. The nature of injuries sustained by the claimant has not been disputed by the insurance company as seen from the evidence available on record.

6. In order to prove her injuries, the claimant has also filed initial treatment record, discharge summary, medical prescriptions, hospital bills, disability certificate, C.T.Brain report, X-ray with report and Audiogram report before the Tribunal which were marked as exhibits. On the side of the insurance company, neither any document was filed nor any witness examined to disprove the nature of injuries pleaded by the claimant before the Tribunal.

7. Pursuant to the direction issued by this Court, the claimant has also filed a notarized affidavit today stating that even now she is unemployed due to the injuries sustained by her as a result of the accident caused by the vehicle insured with the Appellant in CMA.No.801 of 2015.

8. The Tribunal under the impugned award has awarded a compensation of Rs.15,000/- towards transportation, Rs.25,000/- towards extra nourishment, Rs.1,000/- towards damage to clothes, Rs.2,00,000/- towards medical expenses which are supported by bills, Rs.15,000/- towards attender charges, Rs.35,000/- towards loss of amenities of life, Rs.75,000/- towards loss of prospects of marriage and Rs.50,000/- pain and suffering, apart from awarding a compensation of Rs.12,96,000/- towards loss of earning power which in the considered view of this Court cannot be considered to be excessive as alleged by the Insurance Company.

9. The claimant has also filed a separate appeal in CMA.No.1654 of 2015 seeking for enhancement. According to her, the quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation. However, considering the fact that the Tribunal has assessed the compensation only after giving due consideration to the nature of injuries sustained by the claimant based on the disability certificate issued by the Doctor, this Court is of the considered view that the contention of the claimant seeking for enhancement has to be rejected. Further, the Tribunal has fixed the notional monthly income of the claimant at Rs.10,000/- despite the fact that she was only a XIth standard student at the time of the accident. However, after giving due consideration to the overall compensation awarded by the Tribunal to the claimant, this Court is of the considered view that there is no scope for interference as the said compensation is a just compensation.

10.For the foregoing reasons, the Appeals filed by the Insurance company as well as the claimant does not deserve any merit and accordingly, both the appeals are dismissed. The Insurance Company, Appellant in CMA.No.801 of 2015 is directed to deposit the entire award amount along with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, after deducting the amount already deposited if any to the credit of MCOP.No.1978 of 2012 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.1978 of 2012 to the bank account of the claimant who is the Appellant in CMA.No.1654 of 2015 through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petitions are closed, if any.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The IInd Court of Small Causes,
Chennai.

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

+1cc to M/s.V.Venkatesan, AdvocateSr.25921
+1cc to M/s.J.Chandran, Advocate Sr.25957

C.M.A.Nos.801 & 1654 of 2015

bp[co]
srg 13/12/2021