



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.734 of 2021

K.Sivasangari

.. Appellant/Petitioner

Vs.

1.M/s.NYK Auto Logistics India Limited,
Windfall Building, 12th Floor,
Sahar Plaza Complex,
Mathuradas, Vasanji Road,
East Andheri, Mumbai - 400 059.

2.United India Insurance Company Limited,
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.132, Greams Road,
Chennai - 600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2019 made in M.C.O.P.No.6630 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

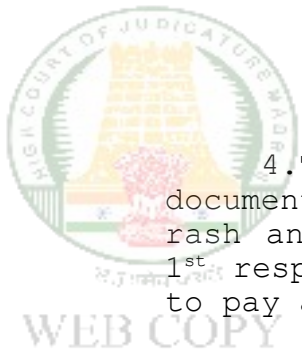
For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.C.Paranthaman

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.12.2019 made in M.C.O.P.No.6630 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.6630 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.11,00,000/- as compensation for the injuries sustained by her in the accident that took place on 17.10.2017.



4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.76,000/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

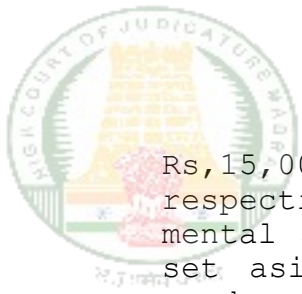
6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered severe head injury, fracture of left hand, multiple injuries at chest & ribs and multiple injuries all over the body. P.W.4/Doctor examined the appellant and certified that appellant suffered 20% disability and issued disability certificate Ex.P16 to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability to 10% and awarded compensation only for 10% disability at the rate of Rs.3,000/- per percentage of disability and the same is meagre. The Tribunal ought to have awarded compensation for 20% disability by adopting multiplier method for loss of earning capacity. At the time of accident, the appellant was aged 21 years and was a House Wife. The Tribunal failed to award any amount towards loss of income. The appellant has taken treatment as inpatient in Government Medical College Hospital, Chengelpet for 14 days from 18.10.2017 to 31.10.2017. The Tribunal failed to award any amount towards future medical expenses. The amounts awarded by the Tribunal towards disability, loss of amenities, extra nourishment, pain and sufferings, attendant charges and transportation are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 20% to 10% on the ground that assessment of percentage of disability will vary from Doctor to Doctor and the percentage of disability for the appellant was assessed by a Private Doctor. Hence, the appellant is not entitled to compensation for 20% disability. The appellant has not produced any material evidence to prove that she is a working woman and due to the injuries, she lost her income. In the absence of any material evidence with regard to avocation and income, the appellant is not entitled to any amount towards loss of income. The appellant has not suffered any functional disability and hence, she is not entitled to any compensation towards loss of earning capacity. The amounts awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.



३.५ आमेव अर्थी

10. It is the further case of the appellant that at the time of accident, she was aged 21 years and was a Housewife. Considering the age, year of accident, nature of injuries and disability suffered by the appellant, a sum of Rs.12,000/- per month is fixed as notional income of the appellant. Due to the injuries and disability suffered by the appellant in the accident, she would not have attended her work atleast for a period of three months. Thus, the appellant is entitled to a sum of Rs.36,000/- (Rs.12,000/- X 3 months) towards loss of income. The appellant has taken treatment as inpatient in Government Medical College Hospital, Chengelpet for 14 days from 18.10.2017 to 31.10.2017. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, attendant charges, transportation and loss of amenities are meagre and hence, the same are enhanced to Rs.20,000/-,



Rs.15,000/-, Rs.15,000/-, Rs.10,000/- and Rs.15,000/- respectively. A sum of Rs.5,000/- awarded by the Tribunal towards mental agony to family members of the appellant is liable to be set aside and it is hereby set aside. The appellant has not produced any medical records to show that she requires further medical treatment. Hence, she is not entitled to any amount towards future medical expenses. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	30,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	10,000/-	20,000/-	Enhanced
3.	Extra nourishment	10,000/-	15,000/-	Enhanced
4.	Transport to Hospital	5,000/-	10,000/-	Enhanced
5.	Attendant charges	5,000/-	15,000/-	Enhanced
6.	Loss of Amenities	10,000/-	15,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Mental agony	5,000/-	-	Set aside
9.	Loss of income	-	36,000/-	Granted
	Total	Rs.76,000/-	Rs.2,12,000/-	Enhanced by Rs.1,36,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.76,000/- is hereby enhanced to Rs.2,12,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.6630 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.



On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

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Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Krk

To

The Special Subordinate Judge No.II,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.17006
+1cc to Mr.C.Paranthaman, Advocate, S.R.No. 16687

C.M.A.No.734 of 2021

SRA(CO)
GN(23/09/2021)