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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.326 of 2021

Vijaya

.. Appellant/Petitioner

Vs.

1. Raja

(1<sup>st</sup> respondent set exparte before the Tribunal)

2. Reliance General Insurance Co. Ltd.,

No.6, Haddows Road, 6<sup>th</sup> Floor,

Nungambakkam,

Chennai 600 006.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.12.2019, made in M.C.O.P. No.3077 of 2016, on the file of the Special Sub Court-2, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondent : Mr.S.Arunkumar (For R2)

#### J U D G M E N T

This appeal has been filed for enhancement of compensation granted by the award dated 04.12.2019, made in M.C.O.P. No.3077 of 2016, on the file of the Special Sub Court-2, Small Causes Court, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.3077 of 2016, on the file of the Special Sub Court-2, Small Causes Court, (Motor



Accident Claims Tribunal) Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 12.03.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by rider of the Motorcycle belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> respondent, as insurer of the offending vehicle, to pay a sum of Rs.1,06,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 04.12.2019, made in M.C.O.P. No.3077 of 2016, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained severe head injury and fracture in right medial malleoli, fracture of distal fibula right leg and multiple injuries all over the body. He has taken treatment as in-patient at KMC Hospital, Chennai from 12.03.2016 to 31.03.2016 and underwent surgery on 21.03.2016. The Medical Board examined the appellant and certified that the appellant suffered 10% permanent disability. The Tribunal ought to have accepted the same and adopted multiplier method in awarding compensation towards loss of pecuniary benefits. Due to the injuries sustained in the accident, the appellant who was doing House Keeping, suffered loss of income during treatment period. The Tribunal awarded only meagre amount of Rs.15,000/- towards loss of income for two months. The Tribunal failed to award any amount towards medical expenses, attendant charges and loss of earning power. The amounts awarded by the Tribunal towards transportation, extra nourishment, damage to clothes, loss of amenities, pain and suffering and disability are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company submitted that the Tribunal accepted the disability certificate issued by the Medical Board and granted compensation at the rate of Rs.3,000/- per percentage for 10% disability. The accident is of the year 2016. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent-Insurance Company and perused the materials available on record.



8. From the materials on record, it is seen that it is the case of the appellant that in the accident, she suffered grievous injuries, fractures and has taken treatment as in-patient at KMC Hospital, Chennai from 12.03.2016 to 31.03.2016 and has undergone surgery on 21.03.2016. She filed discharge summary as Ex.P2, to substantiate the same. She was referred to the Medical Board. The Medical Board examined the appellant and certified that the appellant suffered 10% permanent disability and issued Ex.C1 - disability certificate. The Tribunal has awarded a sum of Rs.30,000/- towards disability at the rate of Rs.3,000/- per percentage for 10% disability and the same is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.50,000/- [Rs.5,000/- x 10%]. The Tribunal failed to award any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.25,000/- is awarded towards attendant charges. Considering the nature of injuries sustained, disability suffered and period of treatment taken, the amounts awarded by the Tribunal towards pain and sufferings, extra nourishment, damages to clothes and loss of dependency are meagre and hence, the same are enhanced to Rs.25,000/-, Rs.25,000/-, Rs.3,000/- and Rs.25,000/- respectively.

9. It is the case of the appellant that at the time of accident, she was doing House Keeping work and was earning a sum of Rs.7,500/- per month. She failed to prove the same. The Tribunal considering the nature of work done and cost of living, rightly fixed sum of Rs.7,500/- per month as notional income, as claimed by the appellant and awarded a sum of Rs.15,000/- towards loss of income, for two months. Due to the injuries sustained in the accident, the appellant would not have worked at least for a period of five months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.37,500/- [Rs.7,500/- x 5 months]. 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:



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| S. No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability         | 30,000/-                        | 50,000/-                          | Enhanced                               |
| 2.    | Pain and suffering | 15,000/-                        | 25,000/-                          | Enhanced                               |
| 3.    | Transportation     | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 4.    | Extra nourishment  | 15,000/-                        | 25,000/-                          | Enhanced                               |
| 5.    | Damage to clothes  | 1,000/-                         | 3,000/-                           | Enhanced                               |
| 6.    | Loss of dependency | 10,000/-                        | 25,000/-                          | Enhanced                               |
| 7.    | Loss of income     | 15,000/-                        | 37,500/-                          | Enhanced                               |
| 8.    | Loss of amenities  | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 9.    | Attendant charges  | -                               | 25,000/-                          | Granted                                |
|       | Total              | 1,06,000/-                      | 2,10,500/-                        | Enhanced by Rs.1.04,500/-              |

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.1,06,000/- is enhanced to Rs.2,10,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, 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.3077 of 2016. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa



To

The Special Subordinate Judge-II,  
Small Causes Court,  
(Motor Accident Claims Tribunal),  
Chennai.

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Copy to:

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

+1CC to Mr.K.V.Muthuvisakan, Advocate, Sr.No.15343

+1CC to Mr.S.Arunkumar, Advocate, Sr.No.15232

C.M.A.No.326 of 2021

VBM (CO)

K.RK. (01.10.2021)