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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2021
PRONOUNCED ON : 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2562 of 2016

H.Saira Zahir Hussain

... Appellant/Petitioner

Vs.

1.R.Ravi Kumar

2.ICICI Lombard General Insurance Company Limited,
No.414, Veer Savarkar Marg,
Near Sidhi Vinayagar Temple, Prabhadevi,
Mumbai.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the amount awarded in MCOP.No.165 of 2012, dated 07.11.2014, on the file of the Motor Accident Claims Tribunal, (III Additional District Judge) Poonamallee, as prayed for with interest.

JUDGMENT

(The case has been heard through video conference)

The claim petitioner is the appellant herein.

2.For the sake of convenience, parties are referred to as per the ranking before the Tribunal.

3.The claim petitioner has filed this appeal seeking enhancement of compensation amount awarded in MCOP.No.165 of 2012, on the file of the Motor Accident Claims Tribunal, (III Additional District Court), Poonamallee, for the injuries sustained in the Motor Accident.

4.The factum of the accident, manner of the accident and rash and negligent driving on the part of the driver of the offending vehicle are not under challenge.

5.During the course of Trial before the Tribunal, on the side of the petitioner PW1 & PW2 were examined and marked Exs.P1 to P19 and on the side of the respondents RW1 has been examined and



marked Exs.R1 to R5.

6. Heard both the learned counsels and perused the materials placed on record.

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7. On a perusal of the records, it appears that as per the nature of the injuries sustained by the claim petitioner, PW2/Dr. Subramanian has fixed the disability at 60%, which is marked as Ex.P18/permanent disability certificate. After considering the evidence of PW2, Ex.P4/discharge summary & Ex.P5/continuous treatment taken in the hospital, the Tribunal has fixed the disability at 60% and granted a sum of Rs.2,000/- per one percentage disability and accordingly, awarded a sum of Rs.1,20,000/- under the head of permanent disability. Taking note of the fact that the date of the accident being 20.04.2011, this Court is inclined to award a sum of Rs.3,000/- per one percentage and accordingly, for 60% disability, the compensation is re-assessed as under:

$60\% \times 3000 = \text{Rs.}1,80,000/-$.

8. With regard to the nature of the injury sustained by the petitioner and as per the evidence of the Doctor, it appears that the claimant was initially admitted in Sri Ramachandra Hospital from 24.12.2011 to 20.01.2012, 31.01.2012 to 06.02.2012 and thereafter, 11.02.2013 to 14.02.2013. On a combined reading of Ex.P2/Accident register and Ex.P4/discharge summary, at three spells as could be seen from Ex.P3/Policy copy, coupled with evidence of PW2/Doctor, I find that for the injuries sustained, surgery in toto eight has been carried out on her hands. Furthermore, in view of the fact that after the eight surgeries in her hand, definitely the petitioner could not have carried her day to day routine job as usual.

9. Considering the nature of the surgeries carried out on her hand on multiple number of terms, grievous nature of the injury and also considering the fact that the petitioner has been out of job for two years, as a special case as per the said circumstances as demonstrated in the evidence, this Court is of the considered view that attendant charges may be fixed at Rs.35,000/- for two years.

10. As noted above, the Tribunal after taking note of the fact that the petitioner has again employed in the very same Company with very same designation and receiving very same salary, has rightly come to the conclusion that there is no loss of earning capacity and her job is without any promotions and hence, this Court has no hesitation to negative the claim of the learned counsel for the claim petitioner that for the loss of earning capacity award has to be passed. Further, on the facts and circumstances of the case as elicited in the cross-



portion under Ex.P6/Medical Bills is only because of the fact that already, the Insurance Company has paid the amount under Exs.R1, R2 & R3.

13(c).Taking note of the evidence of RW1 and after deducting the amount paid by the Insurance Company under Ex.R1, R2 & R3, the Tribunal has rightly arrived at Rs.3,21,342/- and hence, the deduction of a sum of Rs.53,027/-, which has been paid by the Bajaj Alliance Insurance Company is just and reasonable and hence, the Tribunal has rightly awarded the medical charges and the finding is hereby confirmed.

14.It is also appears from the records that as spoken to by PW2/ Doctor, the Tribunal has granted one lakh rupees under the head of future medical expenses and the same is hereby enhanced to Rs.1,50,000/-.

15.Further, this Court is inclined to award a sum of Rs.10,000/- per month under the head of loss of income during the period of treatment (for two years) as under:

Loss of income for two years @ Rs.10,000/- per month
 $24 \times 10,000 = \text{Rs.}2,40,000/-$.

and the compensation under the various heads are re-assessed as under:

S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Permanent disability	1,20,000/- (60% x 2,000)	1,80,000/- (60% x 3,000)
2	Pain and Suffering (eight surgeries within a period of two years)	2,00,000/-	2,00,000/-
3	Nutrition and extra nourishment	10,000/-	10,000/-
4	Attendant Charges	-	35,000/-
5	Loss of amenities	-	20,000/-
6	Transportation charges (for two years)	10,000/-	40,000/-
8	Future Medical Expenses	1,00,000/-	1,50,000/-
9	Medical expenses	3,53,130/-	3,53,130/-



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S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
109	Loss of income during the period of treatment (for two years)	2,40,000/-	2,40,000/-
	Total	10,33,130/-	12,28,130/-

Hence, compensation awarded by the Tribunal is enhanced from Rs.10,33,130/- to Rs.12,28,130/- (Rupees Twelve Lakhs Twenty Eight Thousand One Hundred and Thirty Only).

16. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above.

(b) The second respondent/Insurance Company is directed to deposit the enhanced amount awarded by this court to the credit of MCOP.No.165 of 2012, on the file of the Motor Accident Claims Tribunal (III Additional District Court), Poonamallee, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any and directed to recover the same from the first respondent herein.

(c) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the claim petitioner is permitted to withdraw the enhanced award amount less the amount already withdrawn, if any.

(e) The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(f) No costs.

Sd/-
Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
III Additional District Judge,
Poonamallee.

Copy to: The Section officer,
V.R.Section,
High Court, Madras.

+lcc to Mrs.R.Sree Vidhya, Advocate, S.R.No.17504
+lcc to Mr.K.Varadhakamaraj, Advocate, S.R.No.17263

C.M.A.No.2562 of 2016

GJ(CO)
CB(26/10/2021)