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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1960 of 2021

Kalyani

... Appellant/Petitioner

.Vs.

1. The Correspondent,
Star Matric Higher Secondary School,
Periamanali Post,
Tiruchengode Taluk,
Namakkal District.
2. The Manager,
The Oriental Insurance Company Limited,
No.90A, K.V.A.Complex,
Thuraiyur Road,
Namakkal District - 637 001.

... Respondents/Respondents

PRAYER:-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.07.2019 made in M.C.O.P.No.6 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For R2 : Mr.M.J.Vijaya Raghavan

JUDGMENT

(The Case has been heard through Video Conference)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 12.07.2019 made in M.C.O.P.No.6 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.



2. The appellant is the claimant in M.C.O.P.No.6 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 04.04.2017.

3. 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 bus owned by 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,30,660/- as compensation to the appellant.

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

5. The learned counsel appearing for the appellant contended that in the accident the appellant sustained (i) head injury with brain bleeding (ii) contusion with swelling left occipital scalp (iii) contusion with abrasion right elbow (iv) contusion with abrasion left elbow (v) contusion with swelling right hip and (vi) contusion with swelling left shoulder. P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability and issued Ex.P16/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability from 25% to 18% and awarded compensation only for 18% disability at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have awarded compensation for 25% disability. At the time of accident, the appellant was working in medical shop attached to Shanthi Hospital, Rasipuram and was earning a sum of Rs.15,000/- per month. The Tribunal fixed a meagre sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income only for two months. The appellant has taken treatment as inpatient at C.M.Hospital Namakkal for 4 days from 04.04.2017 to 07.04.2017. The Tribunal failed to award any amount towards loss of amenities. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.M.J.Vijaya Raghavan, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal reduced the percentage of disability from 25% to 18% on the ground that no surgery was done to the appellant and she has taken only conservative treatment. P.W.2/Doctor also has not filed the calculation for assessment of disability. Hence,



the appellant is not entitled to compensation for 25% disability. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.7,500/- per month fixed by the Tribunal as notional income of the appellant is excessive. The appellant has not suffered any functional disability and hence, he 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.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that it is the case of the appellant that in the accident he sustained (i) head injury with brain bleeding (ii) contusion with swelling left occipital scalp (iii) contusion with abrasion right elbow (iv) contusion with abrasion left elbow (v) contusion with swelling right hip and (vi) contusion with swelling left shoulder. P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability and issued Ex.P16/disability certificate to that effect. The Tribunal reduced the percentage of disability from 25% to 18% on the ground that no surgery was done to the appellant and she has taken only conservative treatment. P.W.2/Doctor also has not filed the calculation for assessment of disability. The reason given by the Tribunal for reducing the percentage of disability from 25% to 18% is correct. 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 2017. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.72,000/- (Rs.4,000/- X 18% disability). The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, he is not entitled to any amount towards loss of earning capacity by adopting multiplier method.

9. It is the contention of the appellant that at the time of accident, he was working in medical shop attached to Shanthy



Hospital, Rasipuram and was earning a sum of Rs.15,000/- per month. But the appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal has rightly fixed the notional income of the appellant at Rs.7,500/- per month and awarded a sum of Rs.15,000/- as compensation towards loss of income for two months. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation is meagre and hence, the same is enhanced to Rs.5,000/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that she would have suffered inconvenience and would be facing discomfort in her life. Therefore, the appellant is entitled to a sum of Rs.5,000/- towards loss of amenities. 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.	Pain & sufferings	35,000/-	35,000/-	Confirmed
2.	Disability	54,000/-	72,000/-	Enhanced
3.	Medical Expenses	22,660/-	22,660/-	Confirmed
4.	Loss of income	15,000/-	15,000/-	Confirmed
5.	Transportation	4,000/-	5,000/-	Enhanced
6.	Loss of amenities	-	5,000/-	Granted
	Total	Rs.1,30,660/-	Rs.1,54,660/-	Enhanced by Rs.24,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,30,660/- is hereby enhanced to Rs.1,54,660/- 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 four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.6 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. 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

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.NO.1960 OF 2021

KV(CO)
PBS/23/11/2021