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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.07.2021	Delivered on: .07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.812 of 2020

Thakkaliamma

.. Appellant/Petitioner

Vs.

1.C.Sadagopan

(R1 remained exparte before Tribunal and
hence, his presence dispensed with)

2.The Oriental Insurance Company Limited,
No.115/16, Second Floor,
Oriental House,
Prakasam Salai,
Boradway,
Chennai - 600 108.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.3121 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja
for Ms.M.Malar

For R2 : Mr.N.Sampath

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 19.11.2019 made in M.C.O.P.No.3121 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3121 of 2014



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.9,00,000/- as compensation for the injuries sustained by her in the accident that took place on 20.05.2014.

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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.30,000/- 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.

5.The learned counsel appearing for the appellant contended that in the accident the appellant sustained fracture in right leg, head injuries and multiple injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 25% disability and issued Ex.P11/disability certificate to that effect. Immediately after the accident, the appellant has taken treatment at Sri Ramachandra Medical Centre on 20.05.2014 and thereafter she continued her treatment at Puthur Bone Setters, Andhra Pradesh and produced Exs.P2 to P7 & P10 to that effect. The Tribunal though considered Ex.P2/AR copy, erroneously come to the conclusion that she sustained only simple injuries and rejected the disability suffered by the appellant on the ground that F.I.R. was registered under Sections 279 & 337 of I.P.C. and awarded only a meagre sum of Rs.30,000/- as compensation for simple injuries sustained by the appellant. The appellant has lost her 100% earning capacity and the Tribunal ought to have awarded compensation for 100% loss of earning capacity by adopting multiplier method. At the time of accident, the appellant was aged 50 years, working as Labour at Mohan Brevers, Beer Company, Valasarawakam and was earning a sum of Rs.10,000/- per month. The Tribunal ought to have awarded compensation for disability, pain and sufferings, loss of income, medical expenses, future medical expenses, loss of amenities, mental agony, extra nourishment, transportation, attendant charges and loss of expectation of life separately and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced proper medical records to prove the nature of injuries and disability suffered by her in the accident. In the absence of any medical records, the Tribunal considering the entire materials on record, has awarded a sum of Rs.30,000/- as



compensation for the simple injuries sustained by her and the same is not meagre. The appellant has not produced any document to prove her avocation and income and also has not proved that she lost her earning capacity. Hence, she is not entitled to any amount towards loss of earning capacity by adopting multiplier method. The total compensation awarded by the Tribunal is not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

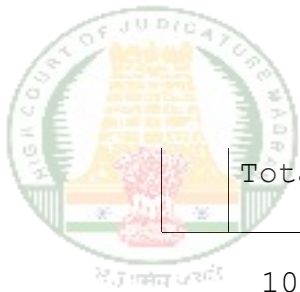
7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent- Insurance Company and perused the entire materials on record.

8. It is the case of the appellant that in the accident she sustained fracture in right leg, head injuries and multiple injuries all over the body. To prove the nature of injuries and disability, she examined herself as P.W.1 and Dr. Mathiazhagan as P.W.2. P.W.2/Doctor examined the appellant and certified that appellant suffered 25% disability and issued Ex.P11/disability certificate to that effect. Immediately after the accident, the appellant has taken treatment at Sri Ramachandra Medical Centre on 20.05.2014 and thereafter she continued her treatment at Puthur Bone Setters, Andhra Pradesh and produced Exs.P2 to P7 & P10 to that effect. The Tribunal though considered Ex.P2/AR copy, erroneously come to the conclusion that she sustained only simple injuries and rejected the disability suffered by the appellant on the ground that F.I.R. was registered under Sections 279 & 337 of I.P.C. and awarded a sum of Rs.30,000/- as compensation for the injuries sustained by her and the same is not correct. Therefore, the amount of Rs.30,000/- awarded by the Tribunal for the injuries sustained by the appellant is liable to be set aside and it is hereby set aside. The Tribunal has not awarded any amount for disability separately. 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the appellant is entitled to a sum of Rs.1,00,000/- (Rs.4,000/- X 25% disability) for disability. The appellant has not examined any Doctor to prove that due to the injuries she suffered any functional disability or lost her earning capacity. In the absence of any evidence with regard to loss of earning capacity or functional disability, the appellant is not entitled to any compensation for loss of earning capacity by adopting multiplier method.



9. It is the further case of the appellant that at the time of accident, she was aged 50 years, working as Labour at Mohan Brevers, Beer Company, Valasarawakam and was earning a sum of Rs.10,000/- per month. Except oral evidence, the appellant has not let in any documentary proof to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, considering the year of accident, age and nature of work done by the appellant, a sum of Rs.7,500/- per month is fixed as her notional income. Due to the injuries sustained by her 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.22,500/- (Rs.7,500/- X 3 months) for loss of income. The appellant has taken treatment at Sri Ramachandra Medical Centre on 20.05.2014 and thereafter she continued her treatment at Puthur Bone Setters, Andra Pradesh and produced Exs.P2 to P7 & P10 to that effect. Considering the nature of injuries and period of treatment taken by the appellant, she is entitled to a sum of Rs.5,000/- each for attendant charges and transportation and Rs.10,000/- each for pain and sufferings and extra nourishment. Considering the nature of injuries, percentage of disability suffered by the appellant and Exs.P3 to P5, this Court is of the considered view that she would have spent some amount towards her medical expenses. Hence, the appellant is entitled to a sum of Rs.5,000/- for medical expenses separately. 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. Thus, the compensation arrived is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Injuries	30,000/-	-	Set aside
2.	Disability	-	1,00,000/-	Granted
3.	Pain and sufferings	-	10,000/-	Granted
4.	Extra nourishment	-	10,000/-	Granted
5.	Transportation	-	5,000/-	Granted
6.	Medical expenses	-	5,000/-	Granted
7.	Loss of Income	-	22,500/-	Granted
8.	Attendant charges	-	5,000/-	Granted



Total	Rs.30,000/-	Rs.1,57,500/-	Enhanced by Rs.1,27,500/-
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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,000/- is hereby enhanced to Rs.1,57,500/- 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.3121 of 2014 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. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 21.02.2020 made in C.M.P.No.3355 of 2020 in C.M.A.SR.No.16808 of 2020. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

krk

To

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

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

+1cc to Ms.M.Malar, Advocate SR.No.37979

C.M.A.No.812 of 2020

RR(CO)
GMY(25/10/2021)