



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.2516 OF 2019

Gandhimathi

.. Appellant

Vs.

1. Iqbal
2. IFFCO TOKIO General Insurance Company Limited,
Represented by its Branch Manager,
No.16, Venkatramana Round Road,
Mahalingapuram,
Pollachi.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.01.2018 made in M.C.O.P.No.209 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

For Appellant : Mr.D.R.Arun Kumar

For R2 : Mr.E.Rajadurai
for Mr.M.B.Gopalan Associates

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 02.01.2018 made in M.C.O.P.No.209 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

2.The appellant is the claimant in M.C.O.P.No.209 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. She filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 08.06.2014.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to 1st respondent and directed the respondents to jointly and severally pay a sum of Rs.83,000/- 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 seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the Tribunal has not awarded any amount towards medical bills as the appellant has not marked the detailed medical bills and she only marked the summary bill alone. The appellant is entitled for the entire expenses incurred by her towards medical bills and the Tribunal ought to have awarded the same. The appellant sustained grievous injuries on her head, fracture on right shoulder, breadth pipes and laceration all over the body. The amounts awarded by the Tribunal for pain and sufferings, loss of income, extra nourishment are meagre. The Tribunal has not awarded any amounts towards loss of future earning, mental agony, future medical expenses and loss of amenities and enjoyment of life. At the time of accident, the appellant was aged 45 years, was a Document Writer and was a 'A' license holder (eligible to write any document all over Tamil Nadu) and was earning a sum of Rs.40,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income of the appellant and awarded compensation towards loss of income only for three months. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.15,000/- for 5% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has produced only the summary bill and she has not produced the detailed bill towards her medical expenses. Hence, the Tribunal has rightly not awarded any amount towards medical expenses. The appellant has not produced any document to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the appellant is not meagre. The appellant failed to produce any medical records to substantiate that she requires future medical treatment. Hence, she is not entitled for compensation towards future medical expenses. The Tribunal considering the entire



materials on record, has awarded a sum of Rs.83,000/- as compensation to the appellant under different heads and the same is not meagre 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 in the accident, the appellant sustained grievous injuries on her head, fracture on right shoulder, breadth pipes and laceration all over the body. To prove the nature of injuries and disability suffered by the appellant, she examined herself as P.W.1. and was referred to the Medical Board. The Medical Board examined the appellant and certified that appellant suffered 5% disability and issued Ex.P12/disability certificate to that effect. The Tribunal accepted the disability certificate issued by the Medical Board and awarded a sum of Rs.15,000/- for 5% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not proved that 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 compensation for loss of earning capacity by adopting multiplier method.

9. It is the further case of the appellant that the Tribunal has not awarded any amount towards medical bills as the appellant has not marked the detailed medical bills and she only marked the summary bill alone and the same is not correct. The appellant has filed the medical bills as additional typed set of papers in the present appeal. Thus, after calculating the entire amount in the medical bills, the appellant is entitled to a sum of Rs.5,29,515/- towards medical bills. At the time of accident, the appellant was aged 45 years, was a Document Writer and was a 'A' license holder (eligible to write any document all over Tamil Nadu) and was earning a sum of Rs.40,000/- per month. To prove her avocation and income, the appellant produced Ex.P10/copy of 'A' license to that effect. The appellant has not produced any documents like salary certificate or wage register to prove her avocation and income. In the absence of any documentary proof with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant and awarded a sum of Rs.18,000/- as compensation towards loss of income for three months and the same is not meagre. The appellant has taken treatment in the Kovai Medical Center and Hospital Limited, Coimbatore as



inpatient for 27 days from 08.06.2014 to 04.07.2014. Considering the nature of injuries, disability and period of treatment taken by the appellant, 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.

10.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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	15,000/-	15,000/-	Confirmed
2.	Pain and sufferings	35,000/-	35,000/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Loss of Income	18,000/-	18,000/-	Confirmed
6.	Attendant charges	5,000/-	5,000/-	Confirmed
7.	Medical expenses	-	5,29,515/-	Granted
	Total	Rs.83,000/-	Rs.6,12,515/-	Enhanced by Rs.5,29,515/-

11.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.83,000/- is hereby enhanced to Rs.6,12,515/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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.209 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet. 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 on the



enhanced amount of compensation. No costs.

Sd/-
Assistant Registrar (CS-VII)

WEB COPY

//True Copy//

Sub Assistant Registrar

krk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Udumalpet.
2. The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.D.R.Arun Kumar, Advocate, S.R.No.33573

C.M.A.No.2516 of 2019

JPL (CO)
RLP (14/03/2022)