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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.609 of 2021

M.Dhanalakshmi .. Appellant/Petitioner

Vs.

1.P.Thevaraj

2.The National Insurance Company Limited,
Selvanayagi Complex,
Perundurai Road,
Near Collector Office,
Erode - 638 011. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2020 made in M.C.O.P.No.751 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.S.P.Yuaraj

For R2 : Mr.J.Chandran

JUDGMENT

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

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 05.03.2020 made in M.C.O.P.No.751 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

3.The appellant is the claimant in M.C.O.P.No.751 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.08.2017.

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4.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 car owned by 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,32,472/- as compensation to the appellant.

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

6.The learned counsel appearing for the appellant contended that in the accident the appellant suffered multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 20% disability and issued Ex.P16/disability certificate to that effect. The Tribunal has awarded a meagre sum of Rs.60,000/- towards disability. At the time of accident, the appellant was working as an Agricultural Coolie and was earning a sum of Rs.14,000/- per month. But 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 three months. The Tribunal ought to have awarded more compensation for loss of income. The appellant has taken treatment in the Akshya Hospital, Namakkal as inpatient for 10 days from 30.08.2017 to 08.09.2017 and underwent surgery on 31.08.2017. The amounts awarded by the Tribunal under other heads are 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 P.W.2/Doctor and awarded a sum of Rs.60,000/- for 20% disability at the rate of Rs.3,000/- per percentage of disability and the same is not meagre. The appellant has not produced any material evidence to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months, which is not meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.2,32,472/- as compensation to the appellant under different heads and the same is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.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.

9.It is the contention of the appellant that in the accident she suffered multiple grievous injuries all over the body. P.W.2/Doctor examined the appellant and certified that the appellant suffered 20% disability and issued Ex.P16/disability certificate to that effect. The Tribunal accepted Ex.P16/disability certificate issued by P.W.2/Doctor and awarded a sum of Rs.60,000/- for 20% disability at

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the rate of Rs.3,000/- per percentage of 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 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,00,000/- (Rs.5,000/- X 20% disability).

10.It is the contention of the appellant that at the time of accident, she was working as an Agricultural Coolie and was earning a sum of Rs.14,000/- per month. Except oral evidence, the appellant has not produced any material evidence to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident is of the year 2017. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.14,000/- per month as claimed by the appellant is fixed as her notional income. Due to the injuries and disability suffered by the appellant in the accident, she would not have attended her work atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.56,000/- (Rs.14,000/- X 4 months). The appellant has taken treatment in the Akshya Hospital, Namakkal as inpatient for 10 days from 30.08.2017 to 08.09.2017 and underwent surgery on 31.08.2017. Considering the nature of injuries and period of treatment taken by the appellant, 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.	Disability	60,000/-	1,00,000/-	Enhanced
2.	Pain and sufferings	45,000/-	45,000/-	Confirmed
3.	Loss of income	22,500/-	56,000/-	Enhanced
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Attendant charges	20,000/-	20,000/-	Confirmed
6.	Medical expenses	64,972/-	64,972/-	Confirmed
7.	Transportation	10,000/-	10,000/-	Confirmed
	Total	Rs.2,32,472/-	Rs.3,05,972/-	Enhanced by Rs.73,500/-

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11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,32,472/- is hereby enhanced to Rs.3,05,972/- 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.751 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. 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.

Krk

-sd/-
Assistant Registrar

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Sub-Assistant Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

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

+1 C.C. to MR.J.CHANDRAN, ADVOCATE SR.NO.15672

+1 C.C. to MR.SP.YUVARAJ, ADVOCATE SR.NO.15610

C.M.A.No.609 of 2021

RGM(CO)
PM(20/10/2021)

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