



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

C.M.A.No.2283 of 2021

D.Jayanthi  
D/o.Dhanaskaran,  
No.2/14, Appadurai Street,  
Santhi Nagar,  
Ramavaram,  
Chennai 600 016.

... Appellant/Claimant

Vs.

1.Thomas,  
S/o.Dhanaraj,  
No.72, North Veli Street,  
Bharathiar Nagar,  
St. Thomas Nagar,  
Chennai 600 016.

2.The New India Assurance Company Limited,  
No.45, Moore Street,  
Chennai 600 001.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2019 made in M.C.O.P.No.2491 of 2011 on the file of the Motor Accident Claims Tribunal, (VI Court of Small Causes), Chennai.

For Appellant : Ms.A.Subadra

For Respondents : Mr.C.Ramesh Babu  
Ms.A.Salomi (for R2)

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.04.2019 made in M.C.O.P.No.2491 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.



2. The appellant is the claimant in M.C.O.P.No.2491 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai. They filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her, in the accident that took place on 12.02.2010.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the two wheeler, belonging to the 1<sup>st</sup> respondent and directed the 2<sup>nd</sup> Respondent/Insurance Company to pay a sum of Rs.1,07,000/- as compensation to the appellant.

4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that at the time of accident, the Appellant was aged about 20 years and was working as Data Entry Operator and earned about Rs.6,000/- per month, another sum of Rs.3,000/- per month by doing over time job as income in the year 2010, whereas the Tribunal awarded a sum of Rs.5,000/- per month as notional income, which is meagre. The Tribunal failed to consider the injuries and period of treatment taken by the Appellant and therefore, the learned counsel for the Appellant prayed for adopting multiplier method and for enhancement of compensation.

6. Per contra, learned counsel appearing for the 2nd respondent contended that the appellant has not produced any document to prove his avocation and income. In the absence of any material to prove the avocation and income, the Tribunal considering the age of the deceased and year of accident has rightly fixed a sum of Rs.5,000/- as monthly income and granted compensation, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2<sup>nd</sup> respondent and perused the entire materials on record.

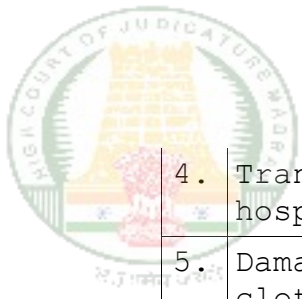
8. From the materials available on record, it is seen that the appellant was working as Data Entry Operator at the time of accident and was earning a sum of Rs.6,000/- per month. The Tribunal fixed a sum of Rs.5,000/- per month as notional



income of the deceased. The accident occurred in the year 2010 and the notional income of the deceased fixed by the Tribunal is meagre. Even otherwise, such determination is inconsonance with judgment of the Honourable Supreme Court delivered in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459. In the referred judgment, the Hon'ble Supreme Court, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. In the present case, the accident occurred in the year 2010. Therefore, considering the age of the Appellant and the year of accident, a sum of Rs.6,500/- per month is fixed as notional income of the appellant.

9. It is seen from the records that PW2 assess the disability of the Appellant at 30% and the Tribunal reduced it as 15%. Eventhough the injury suffered by the Appellant is not coming under the scheduled injury, considering the fact that the Appellant's earning capacity is reduced, this Court enhanced the disability at 25%. A sum of Rs.3,000/- per percentage of disability was awarded by the Tribunal. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.75,000/- (Rs.3,000/- x 25). It is the contention of the appellant that at the time of accident, she was working as a Data Entry Operator. Due to the injuries sustained by her and disability suffered by her in the accident, she would not have attended her work atleast for a period of 3 months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.19,500/- [Rs.6,500/- X 3 months]. Considering the nature of injuries and period of treatment taken by the appellant, this Court is inclined to enhance the award amount of Rs.15,000/- towards extra nourishment, Rs.10,000/- towards transport to hospital, Rs.10,000/- towards attender charges and Rs.15,000/- towards loss of amenities. Other heads awarded by the Tribunal are confirmed.

| S. No | Description         | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|---------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability          | 45,000/-                        | 75,000/-                          | Enhanced                               |
| 2.    | Pain and sufferings | 30,000/-                        | 30,000/-                          | Confirmed                              |
| 3.    | Extra nourishment   | 5,000/-                         | 15,000/-                          | Enhanced                               |



|    |                       |               |               |                         |
|----|-----------------------|---------------|---------------|-------------------------|
| 4. | Transport to hospital | 3,000/-       | 10,000/-      | Enhanced                |
| 5. | Damages to clothes    | 500/-         | 500/-         | Confirmed               |
| 6. | Attender charges      | 1,500/-       | 10,000/-      | Enhanced                |
| 7. | Medical expenses      | 2,000/-       | 2,000/-       | Confirmed               |
| 8. | Loss of income        | 10,000/-      | 19,500/-      | Enhanced                |
| 9. | Loss of amenities     | 10,000/-      | 15,000/-      | Enhanced                |
|    | Total                 | Rs.1,07,000/- | Rs.1,77,000/- | Enhanced by Rs.70,000/- |

10. In the result, this Civil Miscellaneous Appeal is disposed of and the compensation awarded by the Tribunal at Rs.1,07,000/- is hereby enhanced to Rs.1,77,000/- (Rupees one lakh seventy seven thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent 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 twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2491 of 2011 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, 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. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

dpq

To

The learned VI Judge  
Motor Accidents Claims Tribunal,  
Court of Small Causes,  
Chennai.



Copy To

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

+1cc to Mrs.Malar, Advocate SR.No.43735  
+1cc to Mr.C.Rameshbabu, Advocate SR.No.43507

C.M.A.No.2283 of 2021

KV(CO)  
GN(09/02/2022)