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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.539 of 2018
[video conferencing]

Sevanthi ... Appellant / Petitioner

Vs.

1.Ramesh
(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.Reliance General Insurance Co., Ltd.,
Rai's Tower, Plot No.2054, 2nd Avenue,
2nd Floor, Next to Senthil Nursing Home,
Anna Nagar, Chennai - 600 040.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.03.2016 in M.A.T.C.O.P.No.3654 of 2013, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mrs.A.Subadra
For R1 : Ex-parte
For R2 : Mr.S.Arun Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.3654 of 2013 dated 15.03.2016 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3654 of 2013, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai. 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 03.04.2013.

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 Tavera Car owned by 1st respondent and directed the respondents jointly and severally to pay a sum of Rs.3,68,500/- as compensation to the appellant.

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

5.The learned counsel appearing for the appellant/claimant contended that in the accident the appellant sustained fracture of left leg Supra condyle of femur. P.W.2/Doctor examined the appellant and certified that appellant suffered 60% disability and issued Ex.P8/disability certificate to that effect. The Tribunal without giving any valid reason, reduced the percentage of disability from 60% to 40% and awarded compensation only for 40% disability at the rate of Rs.3,000/- per percentage of permanent disability. The Tribunal ought to have awarded compensation for 60% disability. At the time of accident, the appellant was working as Tailor at Youngsan Car Seats Manufacturing Company, Thiruvallur District and was earning a sum of Rs.10,000/- 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 six months. Due to the injuries and fractures suffered by the appellant, she sustained 100% loss of earning power and the Tribunal ought to have awarded compensation for 100% loss of earning capacity. The appellant has taken treatment as inpatient at Government Head Quarters Hospital, Kancheepuram and Chengalpet Government Medical College Hospital for 51 days. The Tribunal failed to award any amount towards future medical expenses. The amounts awarded by the Tribunal towards disability, medical expenses, attendant charges, transportation, loss of earning, damages for pain and sufferings, extra nourishment and loss of amenities 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 reduced the percentage of disability from 60% to 40% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and he has not filed any documents and guidelines to show how he



arrived the percentage of disability. Hence, the appellant is not entitled to compensation for 60% 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, she 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 placed on record.

8. From the materials available on record, it is seen that it is the case of the appellant that in the accident she sustained fracture of left leg Supra condyle of femur. P.W.2/Doctor examined the appellant and certified that the appellant suffered 60% disability and issued Ex.P8/disability certificate to that effect. The Tribunal reduced the percentage of disability from 60% to 40% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and he has not filed any documents and guidelines to show how he arrived the percentage of disability. The Tribunal has given valid reason for reducing the percentage of disability from 60% to 40% and hence, the appellant is not entitled to compensation for 60% disability. The accident is of the year 2013 and a sum of Rs.3,000/- awarded per percentage of disability by the Tribunal is meagre. Considering the year of accident, a sum of Rs.3,500/- is awarded per percentage of permanent disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,40,000/- (Rs.3,500/- X 40% disability). The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to any amount towards loss of earning capacity. Considering the nature of injuries, disability and period of treatment 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:



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Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Transportation, nourishing food and miscellaneous expenditure	Rs.30,000/-	Rs.30,000/-	Confirmed
2	Attender charges	Rs.12,750/-	Rs.12,750/-	Confirmed
3	Medical expenses	Rs.748.50/-	Rs.748.50/-	Confirmed
4	Disability	Rs.1,20,000/-	Rs.1,40,000/-	Enhanced
5	Loss of earning during the period of treatment	Rs.45,000/-	Rs.45,000/-	Confirmed
6	Damages for pain, suffering and trauma	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
7	Loss of amenities	Rs.60,000/-	Rs.60,000/-	Confirmed
	Total	Rs.3,68,498.50/-	Rs.3,88,498.50/-	Enhanced by
		Rounded off @ Rs.3,68,500/-	Rounded off @ Rs.3,88,500/-	Rs.20,000/- -

9. In the result, this Civil Miscellaneous Petition is partly allowed and the compensation awarded by the Tribunal at Rs.3,68,500/- is hereby enhanced to Rs.3,88,500/- together with interest at the rate of 7.5% per annum from the date of filing 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.3654 of 2013, on the file of the Motor Accidents Claims Tribunal, V 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. The appellant is



directed to pay the necessary Court fee as per the order of this Court dated 22.02.2017 made in C.M.P.No.1992 of 2017 in C.M.A.SR.No.4031 of 2017. It is made clear that the appellant is not entitled to any interest for the delay period as per the order of this Court dated 20.02.2018 made in C.M.P.No.6516 of 2017 in C.M.A.SR.No.4031 of 2017. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To:

- 1.The Motor Accidents Claims Tribunal,
V Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.539 of 2018

vsn II[co]
srg 03/03/2022