



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1354 of 2020

T.Kalaiselvi

...Appellant/Petitioner

Vs.

1. Muthukathan

2. The Oriental Insurance Company Limited,
TP HUB,
Parimalam Complex,
Mettur Road,
Opp. to Bus Stand,
Erode.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Award passed in M.C.O.P.No.1713 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.II, Salem dated 25.02.2020.

For Appellant : Mr.J.Prithivi

For Respondent 2 : Mr.J.Chandran

Respondent-1 : Served - No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 02.08.2013 passed by the Motor Accident Claims Tribunal (Special Sub Court No.II, Salem) in M.C.O.P.No.1713 of 2018.

2. Heard Mr.J.Prithivi, learned counsel for the Appellant/claimant and Mr.J.Chandran, learned counsel for the second respondent/ Insurance Company.



3. The appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal has preferred this appeal seeking for enhancement.

4. The details of the compensation awarded by the Tribunal to the appellant/claimant are as follows:

Heads	Award Amount (Rs.)
Permanent Disability	1,35,000/-
Pain and Sufferings	50,000/-
Loss of Amenities	50,000/-
Medical Expenses	6,29,283/-
Future Medical Expenses	75,000/-
Loss of Earning during Treatment	90,000/-
Transport Expenses	25,000/-
Nutrition	50,000/-
Attender Charges	25,000/-
Damages to cloth	1,000/-
Total	11,30,283/-

5. The appellant/claimant sustained the following injuries on 07.08.2018 as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. The cause of the accident has not been disputed by the respondents as seen from the impugned award. The only question that arises for consideration is whether the appellant/claimant is entitled for enhancement of compensation or not. The appellant/claimant sustained the following injuries: (1) Severe degloving injury left leg/calf/foot with fracture left fibula neck; (2) Degloving injury left leg/calf and foot; and (3) Post traumatic raw area left leg/circumferential aspect.

6. The nature of injuries sustained by the appellant/claimant has not been disputed by the respondents before the Tribunal. The Doctor has assessed the disability at 45% and the Tribunal has accepted the same and assessed the appellant/claimant's disability at 45%. The Tribunal awarded disability compensation of Rs.1,35,000/- calculated at Rs.3,000/- per percentage of disability for the 45% disability. Admittedly, the appellant/claimant was hospitalised for a period of 45 days. The discharge summary also marked as Exhibit before the Tribunal and the respondents have also not disputed the



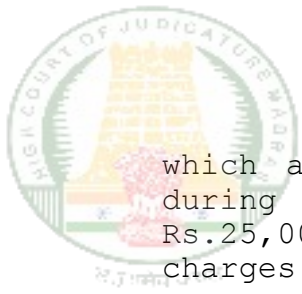
same. The nature of injuries sustained by the appellant/claimant are grievous in nature and certainly he would have lost his earning capacity. However, the Tribunal has erroneously awarded disability compensation of Rs.1,35,000/- instead of assessing the compensation towards Loss of Earning Capacity by adopting the multiplier method. This Court after giving due consideration to the nature of injuries sustained by the appellant/claimant and the long period of her hospitalisation, is of the considered view that multiplier method will have to be adopted for the purpose of assessing compensation towards Loss of Earning Capacity of the appellant/claimant. Since the disability assessed by the Doctor before the Tribunal was not for the whole body, this Court assess the whole body disability based on the disability certificate issued by the Doctor at 15% i.e. 1/3rd of 45%. Accordingly, disability is fixed by this Court at 15% for the purpose of assessing the Loss of Earning Capacity to the appellant/claimant. The Tribunal has fixed the national monthly income of the appellant/claimant at Rs.7,500/- for an accident that happened in the year, 2019. Since no documentary evidence was produced by the appellant/claimant in support of her monthly income, the assessment made by the Tribunal at Rs.7,500/- is a correct assessment. Accordingly, this Court awards compensation at Rs.2,29,500/- towards Loss of Income to the appellant/claimant as detailed hereunder:

Rs.7,500/- x 12 months x proper multiplier of 17 x 15% Disability

$$7,500 \times 12 \times 17 \times 15 / 100 = \text{Rs.2,29,500/-}$$

7. However, there cannot be separate compensation payable to the appellant/claimant towards disability at Rs.1,35,000/- which will amount to duplication. Accordingly, the disability compensation awarded by the Tribunal under the impugned award at Rs.1,35,000/- is hereby set aside by this Court. Instead as stated supra, this Court awards a compensation of Rs.2,29,500/- towards Loss of Earning Capacity to the appellant/claimant.

8. The Tribunal has awarded lesser compensation towards Pain and sufferings, Loss of Amenities and Future Medical expenses without giving due consideration to the nature of injuries sustained by the appellant/claimant and the long period of her hospitalisation as per her future medical expenses. This Court is of the considered view that the compensation awarded by the Tribunal towards aforementioned heads will have to be enhanced. Accordingly, this Court enhances the compensation towards Pain and Suffering from Rs.50,000/- to Rs.1,00,000/-, towards Loss of Amenities from Rs.50,000/- to Rs.1,00,000/- and towards Future Medical Expenses from Rs.75,000/- to Rs.85,000/-. Insofar as the compensation awarded by the Tribunal towards Medical Expenses



which are supported by medical bills, towards Loss of Earning during Treatment at Rs.90,000/-, towards Transport Expenses at Rs.25,000/-, towards Nutrition at Rs.50,000/-, towards Attender charges at Rs.25,000/- and Damages to cloth at Rs.1,000/- are concerned, the same cannot be considered to be inadequate as alleged by the appellant/claimant. Accordingly, the same are confirmed by this Court.

9. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.11,30,283/- to Rs.13,34,783/- as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Disability	1,35,000/-	-
Pain and Sufferings	50,000/-	1,00,000/-
Loss of Amenities	50,000/-	1,00,000/-
Medical Expenses	6,29,283/-	6,29,283/-
Future Medical Expenses	75,000/-	85,000/-
Loss of Earning during Treatment	90,000/-	90,000/-
Transport Expenses	25,000/-	25,000/-
Nutrition	50,000/-	50,000/-
Attender Charges	25,000/-	25,000/-
Damages to cloth	1,000/-	1,000/-
Loss of Earning Capacity	-	2,29,500/-
Total	11,30,283/-	13,34,783/-

Conclusion:

10. In the result, this appeal shall stands partly allowed. The Second Respondent-Insurance Company is directed to deposit the amount awarded by this Court i.e. Rs.13,34,783/- (Rupees Thirteen lakhs Thirty Four thousand Seven hundred and Eighty Three only) together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs after deducting the amount already deposited to the credit of M.C.O.P.No.1713 of 2018 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying to the credit of M.C.O.P.No.1713 of 2018 to the bank



account of the Appellant/claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant before receiving the copy of this Judgment. No costs.

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Sd/-
Assistant Registrar(CS II)

/True Copy//

Sub Assistant Registrar

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To

Motor Accident Claims Tribunal,
The Special Sub Judge No.II,
Salem.

Copy to

The Section Officer
V.R.Section,
High Court of Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.52705

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.52400

C.M.A.No.1354 of 2020

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NSK 10/11/2021