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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3006 of 2019

Kanmani

...Appellant/Petitioner

Vs.

1. D.Nalini

2. National Insurance Co. Ltd.,
Branch Office, 19/B, Rajamani Thottam,
Bhavani Main Road,
N.H.47, Sankakiri,
Salem District 637 301.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2018, made in M.C.O.P. No.8 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Palacode.

For Appellant : Mr.K.Suryanarayan
for M/s.M.Mohamed Riyaz

For Respondents : No appearance (For R1)
Mrs.R.Sreevidhya (For R2)

J U D G M E N T

This appeal has been filed for enhancement of compensation granted by the award dated 20.12.2018, made in M.C.O.P. No.8 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Palacode.

2.The appellant-claimant filed M.C.O.P. No.8 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Palacode, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.09.2016.

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 Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the offending vehicle, to pay a sum of Rs.2,39,500/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.12.2018, made in M.C.O.P. No.8 of 2017, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and multiple fractures and has taken treatment as in-patient at Salem Medical Centre Hospital from 30.08.2016 to 04.12.2016. The appellant was referred to the Medical Board, Dharmapuri. The Medical Board at Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 35% disability. The Tribunal having accepted Ex.P9 - disability certificate issued by the Medical Board, erred in awarding meagre amount of Rs.3,000/- per percentage for 35% disability. Taking into consideration the nature of injuries and disability suffered by the appellant, the Tribunal ought to have adopted multiplier method in awarding compensation towards disability. At the time of accident, the appellant was working as a Nurse at Salem Medical Centre Hospital and Mettur Siddharth Maternity Hospital and was earning a sum of Rs.15,000/- per month. She has produced Ex.P11 - salary certificate to prove her income. The Tribunal erroneously rejected Ex.P11 and fixed only a meagre sum of Rs.6,000/- per month as notional income. The Tribunal failed to award any amount towards loss of amenities. The amounts awarded by the Tribunal towards loss of income, pain and suffering, extra nourishment, attendant charges and transportation to the Hospital are meagre and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant in her cross examination admitted that she was earning a sum of Rs.10,000/- per month. On the other hand, she has produced Ex.P11-salary certificate to show that she was earning a sum of Rs.15,000/- per month. The appellant failed to prove Ex.P11 by examining the author of the document. In view of the above, the Tribunal rejected the evidence of appellant as P.W.1 with regard to income and Ex.P11 - salary certificate and fixed a sum of Rs.6,000/- per month as notional income, which is not meagre. Considering the nature of injuries suffered by the appellant, the Tribunal awarded compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

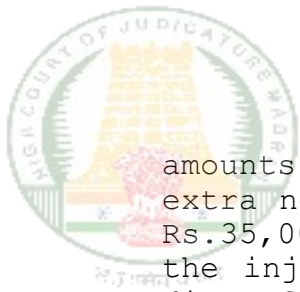


7. Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

8. Heard the learned counsel appearing for the appellant through video conference as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9. From the materials on record, it is seen that it is the case of the appellant that at the time of accident, she was working as a Nurse at Salem Medical Centre Hospital and Mettur Siddharth Maternity Hospital and was earning a sum of Rs.15,000/- per month. She has produced Ex.P11 - salary certificate to prove her income. In the cross examination, the appellant has admitted that she was earning a sum of Rs.10,000/- per month. The appellant has not examined the author of Ex.P11 to prove her income as Rs.15,000/- per month. The Tribunal taking into consideration the evidence of P.W.1 and Ex.P11, rejected the same and fixed the monthly income at Rs.6,000/-. The accident is of the year 2016. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.15,000/- per month, as claimed by the appellant is fixed as notional income. Due to the injuries suffered in the accident, she would not have worked at least for a period of six months. Hence, the amount of Rs.18,000/- awarded by the Tribunal towards loss of income is enhanced to Rs.90,000/- [Rs.15,000/- x 6 months], at the rate of Rs.15,000/- per month for 6 months.

10. According to the appellant, in the accident, she suffered grievous injuries and multiple fracture and has taken treatment at Salem Medical Centre Hospital as in-patient from 30.08.2016 to 04.10.2011, for a period of 36 days. She was referred to the Medical Board. The Medical Board at Government Medical College Hospital, Dharmapuri examined the appellant and certified that the appellant suffered 35% disability. The Tribunal has awarded a sum of Rs.3,000/- per percentage for 35% disability. 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 2016. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,75,000/- [Rs.5,000/- x 35%], at the rate of Rs.5,000/- per percentage for 35% disability. Considering the nature of injuries and period of treatment taken by the appellant, the



amounts awarded by the Tribunal towards attendant charges and extra nourishment are meagre and hence, the same are enhanced to Rs.35,000/- each. Considering the age of the appellant, due to the injuries sustained in the accident, she would have suffered discomfort and inconvenience. The Tribunal failed to award any amount towards loss of amenities and damage to clothes. The appellant is entitled to a sum of Rs.50,000/- towards loss of amenities and Rs.1,000/- towards damage to clothes. 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	1,05,000/-	1,75,000/-	Enhanced
2.	Pain and suffering	40,000/-	40,000/-	Confirmed
3.	Extra nourishment	10,000/-	35,000/-	Enhanced
4.	Transportation	5,000/-	10,000/-	Enhanced
5.	Damage to clothes	-	1,000/-	Granted
6.	Loss of income	15,000/-	90,000/-	Enhanced
7.	Loss of amenities	-	50,000/-	Granted
8.	Medical expenses	59,500/-	59,500/-	Confirmed
9.	Attendant charges	5,000/-	35,000/-	Enhanced
	Total	2,39,500/-	4,95,500/-	Enhanced by Rs.2,56,000/-

Though the Tribunal has awarded a sum of Rs.20,000/- towards extra nourishment, Rs.10,000/- towards transportation and Rs.18,000/- towards loss of income, while mentioning in the tabular column, it has been erroneously mentioned as Rs.10,000/- for extra nourishment, Rs.5,000/- for transportation and Rs.15,000/- for loss of income. Subsequently the total compensation awarded by the Tribunal has been wrongly arrived at Rs.2,39,500/-, instead of Rs.2,57,500/-.

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,39,500/- is enhanced to Rs.4,95,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the award amount, now



determined by this Court, along with interest and costs, 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.8 of 2017, at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.2,56,000/-, enhanced by this Court as per the order of this Court dated 23.07.2019, made in C.M.P.No.11317 of 2019 in C.M.A.SR.60525 of 2019. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Palacode.

Copy to

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

+1cc to Mr.M.Mohamed Riyas, Advocate, S.R.No.7147

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.7541

C.M.A.No.3006 of 2019

NRL[co]
NSK 15/09/2021