

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2909 of 2019

Muniyammal

.. Appellant/Claimant

Vs.

1.Vivek

(R1 remained exparte before the Tribunal)

2.ICICI Lombard General Insurance Co. Ltd.,

No.84/85, Waltax Road,

Chepauk,

Chennai 600 003.

.. Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.03.2019, made in M.C.O.P. No.2820 of 2017, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mrs.A.Subadra

for M/s. M.Malar

For Respondents : Mr. K.Poomalai (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 13.03.2019, made in M.C.O.P. No.2820 of 2017, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2820 of 2017, on the file of the III Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.35,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.05.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by 1st respondent, rider-cum-owner of

the Motorcycle and directed the 2nd respondent, as insurer of the offending vehicle, to pay a sum of Rs.79,700/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 13.03.2019, made in M.C.O.P. No.2820 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 suffered injuries like fracture of right forearm with wrist at distal radius, injury over the right great toe, swelling and deformity over the right wrist and other multiple grievous injuries all over the body. She has taken treatment as in-patient at Excellent care Hospital, Chennai and continued her outpatient treatment at Murugan Hospital, Kilpauk, Chennai. The appellant examined P.W.2 Doctor who assessed that the appellant suffered 25% disability. The Tribunal without assigning any reasons, reduced the same to 15% and failed to adopt multiplier method. The Tribunal also failed to award any amount towards mental agony and loss of expectation of life. The amounts awarded by the Tribunal towards medical expenses, loss of income, pain and sufferings, transportation, extra nourishment, future medical expenses, damages, loss of amenities, attendant charges and disability 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 Tribunal considering the nature of injuries and in the absence of any worksheet and guidelines to substantiate the assessment of P.W.2 Doctor, rightly reduced the percentage of disability to 15% and awarded compensation, which is in order. In the absence of any material evidence to prove the avocation and income, the Tribunal rightly fixed monthly income of the appellant at Rs.6,500/- and 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. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

8. From the materials on record, it is seen that it is the contention of the appellant that in the accident she suffered multiple and grievous injuries all over the body. P.W.2 Doctor has examined the appellant and certified that the appellant suffered 25% disability. To prove the same, the appellant has marked O.P. Chit and disability certificate as Exs.P4 and P13

respectively. The Tribunal reduced the percentage of disability to 15% on the ground that the appellant has not undergone any surgery and granted a sum of Rs.45,000/- towards disability at the rate of Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is not correct. The 2nd respondent-Insurance Company has not let in any evidence to disprove the evidence of P.W.2 Doctor and Ex.P13-disability certificate. Hence, the appellant is entitled to compensation for 25% disability, as assessed by P.W.2 Doctor. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s. IFFCO TOKIO General Insurance Company Limited Vs. Venkatesh 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. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.1,25,000/- [Rs.5,000/- x 25%], at the rate of Rs.5,000/- per percentage for 25% disability.

9.It is the contention of the appellant that at the time of accident, she was working as a Cook and was earning a sum of Rs.20,000/- per month. She failed to prove the same. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income. The accident is of the year 2017. Considering the year of accident and the nature of work done by the appellant, a sum of Rs.10,000/- per month is fixed as notional income. Due to the accident, the appellant would not have worked atleast for a period of two months. Thus, the compensation granted by the Tribunal towards loss of income is modified to Rs.20,000/-. The amount 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	45,000/-	1,25,000/-	Enhanced
2.	Pain and suffering	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	2,500/-	2,500/-	Confirmed
4.	Transportation	2,500/-	2,500/-	Confirmed

5.	Damages to clothes	500/-	500/-	Confirmed
6.	Attendant charges	200/-	200/-	Confirmed
7.	Medical expenses	5,000/-	5,000/-	Confirmed
8.	Future medical expenses	2,500/-	2,500/-	Confirmed
9.	Loss of income	6,500/-	20,000/-	Enhanced
10.	Loss of amenities	5,000/-	5,000/-	Confirmed
	Total	79,700/-	1,73,200/-	Enhanced by Rs.93,500/-

10. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.79,700/- is enhanced to Rs.1,73,200/- 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, 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.2820 of 2017. 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. The appellant is directed to pay the necessary court fee on the enhanced award amount. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa
To

The III Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.M.Malar, Advocate Sr.No.327
+1cc to Mr. K.Poomalai, Advocate Sr.No.309

C.M.A.No.2909 of 2019

BS(CO)
NR 20/04/2021