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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2461 of 2014

G.Easwari

... Appellant/ Claimant

Vs.

1. S.Arokiyasamy
(1st Respondent remained
exparte in the Tribunal)

2. The Oriental Insurance Company Ltd.,
No.7, Esplanade, Chennai-8.

... Respondents/respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 25.06.2007 passed in M.C.O.P.No.3796 of 2002 by the VI Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For II respondent : Mr.K.Vinoth
for Mr.Elveera Ravindran

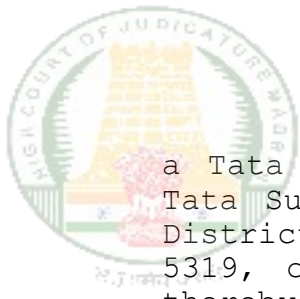
For I respondent : No appearance

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court to enhance the compensation.

2. The appellant/ claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 23.01.2002.

3. The brief case of the claimant is as follows: On 23.01.2002 at about 8.00 hours, the petitioner was travelling in



a Tata Sumo bearing registration No.TN-02-D-8177 and while the Tata Sumo nearing Poly Gramam Ellai High Ways Road, Villupuram District, a speedy Container lorry bearing registration No.TSE-5319, coming from opposite side dashed against the Tata Sumo, thereby the claimant and the other passengers, including the driver had sustained injuries and the petitioner has taken treatment in the Government Hospital, Ulundurpettai. According to the claimant, the rash and negligent driving of the driver of the Container Lorry was the cause of accident, and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to them.

4. The second respondent/ Insurance Company resisted the claim petition by filing counter affidavit.

5. Before Tribunal, including the present claimant, totally eight persons have filed claim petitions, who have travelled in the same Tata Sumo car on the date of accident. On the side of the claimant in the instant case, she and one Dr.Gopalan were examined as PW5 and PW9 respectively and Ex.P51 to Ex.P55 and Ex.P71 and Ex.P72 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,41,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of income (3000x2)	6,000
2	Transportation charges	5,000
3	Extra nourishment	1,000
4	Medical expenses	38,896
5	Mental agony	5,000
6	Pain and sufferings	5,000
7	Disability 50 x 1000	50,000
8	Loss of earning power	30,000
	Total	1,40,896
	Rounded off to	1,41,000

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the second respondent and I have perused the materials on record.



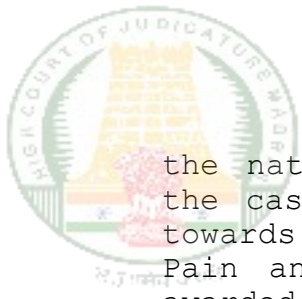
8. The learned counsel appearing for the appellant/ claimant submitted that the claimant was a vegetable vendor and was earning a sum of Rs.10,000/- per month, however, the Tribunal has fixed only a sum of Rs.3,000/- as monthly income and awarded a sum of Rs.6000/- towards " Loss of income " for only two months. He further submitted that the claimant has sustained severe head injuries and she was treated as inpatient from 23.1.2002 to 4.2.2002 and thereafter also has taken treatment as out patient for a long time, but, without considering the above facts, the Tribunal has awarded a very meagre amount of Rs.5,000/- towards pain and sufferings and not awarded any amount towards " Permanent disability" and " Future medical bills". He also submitted that the compensation awarded under the other heads also very meagre and therefore, he prayed for enhancement of compensation.

9. The learned counsel appearing for the respondent/ insurance company submitted that after analysing the evidence on record and the medical reports, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the points for determination is
(i) Whether the compensation awarded
by the Tribunal has to be
enhanced.?

11. Point No.1:

The claimant has stated in the claim petition that she was a vegetable vendor and was earning a sum of Rs.10,000/- per month. However, there is no proof of income. Therefore, by considering the age of the claimant and the year of accident, the Tribunal has fixed the monthly income of the deceased as Rs.3,000/- and awarded Rs.6,000/- towards " loss of income" for two months. The Tribunal has also awarded Rs.5,000/- towards " Transportation charges" and Rs.38,896/- towards " Medical Bills", as per bill. This court do not find any fault on the compensation awarded under the above said heads. Besides, a sum of Rs.5,000/- towards " Mental Agony" and a sum of Rs.30,000/- towards " Loss of earning power" was also awarded as compensation. In addition to that as per Ex.P71 disability certificate, the disability suffered by the claimant was fixed at 50% and by awarding Rs.1,000/- per percentage, granted a sum of Rs.50,000/- towards " Disability". The Tribunal has given cogent reasons and to award such compensation and there is no error on it. However, the Tribunal has awarded only a sum of Rs.1,000/- towards " Extra Nourishment" and Rs.5,000/- towards " Pain sufferings ". It is not the disputed fact that the claimant has sustained head injuries. Therefore, by considering



the nature of the injuries and the facts and circumstances of the case, this court is inclined to award a sum of Rs.5,000/- towards " Extra Nourishment" and a sum of Rs.20,000/- towards " Pain and sufferings". Accordingly, the modified compensation awarded by this court under various are extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced by this court
1	Loss of income (3000x2)	6,000	6,000
2	Transportation charges	5,000	5,000
3	Extra nourishment	1,000	5,000
4	Medical expenses	38,896	38,896
5	Mental agony	5,000	5,000
6	Pain and sufferings	5,000	20,000
7	Disability 50 x 1000	50,000	50,000
8	Loss of earning power	30,000	30,000
	Total	1,40,896	1,59,896
	Rounded off to	1,41,000	1,60,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the Award, the Tribunal has decided that as per the First Information Report, the fault on the driver of the container lorry is the cause of accident. The Tribunal has directed the insurance company to deposit the compensation amount and also given liberty to them to recover the award amount from the owner of the vehicle. The above said decision rendered by the Tribunal does not warrant any interference by this court. Accordingly, the point is answered

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from 1,41,000/- to Rs.1,60,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the enhanced compensation of Rs.1,60,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order. The insurance company is at liberty to recover the above said compensation amount from the owner of the vehicle.



(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Judge,
Motor Accident Claims Tribunal,
Court of Small causes, Chennai.

CMA. No.2461 of 2014

SPD(CO)
HS(06/09/2021)