

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2976 of 2014

S. Ranganayaki

.... Appellant

Versus

1. S. Sivakumar

2. M/s. Royal Sundaram Alliance Ins. Co. Ltd.,
No.46, Whites Road,
Royapettah,
Chennai – 600 014.

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No.3029 of 2011 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai, dated 17.02.2014.

For Appellant

: Mr.T.G. Balachandran

For Respondents

: Mr. E. Rajadurai
for M/s.M.B.Gopalan Associates
for R2
R1 – person not found

JUDGMENT**(Heard video conference)**

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 17.02.2014 passed by the IV Court of Small Causes, Motor Accident Claims Tribunal Chennai, in M.C.O.P.No.3029 of 2011.

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

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of earning	10000
Transport to hospital	5000
Extra nourishment	5000
Medical expenses	567
Pain and suffering	20000
Disability of 35% at Rs.2,000/- per percentage	70000
Total compensation	110567

4. Heard Mr.T.G. Balachandran, learned counsel for the appellant / claimant and Mr.E. Rajadurai, learned counsel for the 2nd respondent / Insurance Company.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The appellant / claimant has sustained pelvic fracture as a result of an accident on 10.05.2011 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 before the Tribunal.

7. Before the Tribunal, the appellant / claimant has filed eight documents, which were marked as Exs.P1 to P8 and two witnesses were examined on her side viz., the appellant / claimant herself as PW1 and the Doctor, who examined her as PW2. On the side of the respondents, neither any document was filed nor any witness examined before the Tribunal.

8. The accident happened in the year 2011. The appellant / claimant in her claim petition filed before the Tribunal has pleaded that she was working as a Sales Executive in a private concern and was earning Rs.4,500/-p.m., at the time of the accident, which has been accepted by the Tribunal under the impugned award. Since the Tribunal has fixed the monthly income only based on the plea made by the appellant / claimant before the Tribunal in her claim petition, which cannot be considered to be excessive, this Court confirms the assessment of the monthly income of the appellant / claimant made by the Tribunal. The Tribunal has awarded a compensation of Rs.10,000/- towards loss of earning to the appellant / claimant during the period of her treatment. After giving due consideration to the nature of the injuries sustained by the appellant, this Court deems it fit to award a higher compensation towards loss of income to the appellant / claimant during the period of her treatment. This Court is of the considered view that atleast for a period of four months, the appellant / claimant would have been unable to do her regular avocation. Accordingly, this Court enhances the compensation to the appellant / claimant towards loss of earning during the period of her treatment to Rs.18,000/- calculated at Rs.4,500/-p.m., for a period of four months instead of Rs.10,000/- erroneously fixed by the Tribunal.

9. The Doctor (PW2), who assessed the disability of the appellant / claimant at 40%, whereas the Tribunal has reduced the disability to 35%. Sufficient reasons have been given by the Tribunal for reduction of disability to 35% and the same is confirmed by this Court. The accident happened in the year 2011. The Tribunal has awarded the disability compensation to the appellant / claimant calculated at Rs.2,000/- per percentage of disability. If the year of the accident was given due consideration, the Tribunal ought to have awarded a higher compensation towards disability suffered by the appellant / claimant. This Court after giving due consideration to the year of the accident fixes the disability compensation at Rs.1,05,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

10. The Tribunal has awarded a compensation of Rs.5,000/- towards transportation, which in the considered view of this Court is low. Having sustained pelvic fracture, there could have been a necessity for the appellant / claimant to visit the hospital frequently and therefore, the Tribunal ought to have awarded a higher compensation towards transportation. This Court therefore enhances the compensation towards transportation to Rs.7,500/- instead of Rs.5,000/- fixed by the Tribunal.

11. However, the Tribunal has erroneously awarded a lesser compensation to the appellant / claimant towards extra nourishment at Rs.5,000/- and it has to be enhanced. Accordingly, the same is enhanced by this Court to Rs.10,000/-, instead of Rs.5,000/- fixed by the Tribunal.

12. The Tribunal has awarded only a compensation of Rs.567/- towards medical expenses which is a meagre sum and has to be necessarily enhanced due to the nature of injuries sustained by the appellant / claimant. This Court enhances the compensation towards medical expenses to Rs.15,000/- after giving due consideration to the nature of injuries sustained by the appellant and the period of his medical treatment.

13. The Tribunal has awarded a compensation of Rs.20,000/- towards pain and suffering which has to be enhanced in view of the nature of injuries sustained by the appellant / claimant. After giving due consideration to the nature of injuries sustained by the appellant / claimant and the evidence available on record, this Court enhances the compensation towards pain and suffering to Rs.25,000/- instead of Rs.20,000/- fixed by the Tribunal.

14. The Tribunal has failed to award any compensation towards loss of amenities to the appellant / claimant which she is legally entitled

to. This Court awards a compensation of Rs.15,000/- towards loss of amenities to the appellant / claimant.

15. The Tribunal has not awarded any compensation towards loss of clothing which the appellant / claimant is legally entitled to. This Court awards a compensation of Rs.1,000/- towards loss of clothing.

16. For the foregoing reasons, the award of the Tribunal is hereby enhanced in the following manner :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Loss of earning	10000	18000
Transport to hospital	5000	7500
Extra nourishment	5000	10000
Medical expenses	567	15000
Pain and suffering	20000	25000
Disability of 35% at Rs.2,000/- per percentage	70000	105000
Loss of amenities	-	15000
Loss of clothing	-	1000
Total compensation	110567	196500

17. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,10,567/- to Rs.1,96,500/-, as indicated above. No costs.

18. The second respondent / Insurance Company is directed to

deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.3029 of 2011 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai, 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 award amount directly to the bank account of the appellant / claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

24.09.2021

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

vsi2

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ABDUL QUDDHOSE, J.

To

1. The IV Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.



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