



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4273 of 2019

Kamarunnisa Settu

.. Appellant/Petitioner

Vs.

1.P.Chinnasamy

2.Divisional Manager

M/s.The Oriental Insurance Company Ltd.

Diviya Tower, 2nd floor, no.15-1

Fort main road, Salem District-636 001.

.. Respondents/
Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2016 made in M.C.O.P.No.139 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

For Appellant : Mr.A.Sathishkumar

for Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mr.M.J.Vijayaraaghavan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.06.2016 made in M.C.O.P.No.139 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur.

2.The appellant is claimant in M.C.O.P.No.139 of 2015 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Perambalur. She filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by her in the accident that took place on 18.11.2014.



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 Bolero pick up van belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said Bolero pick up van to pay a sum of Rs.2,72,970/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered fractures on right leg, right thigh and right hip and grievous injuries all over the body. The appellant has taken treatment as in-patient in Annal Gandhi Government Headquarters Hospital, Puthur, Trichy, from 18.11.2014 to 26.12.2014 and underwent surgeries. P.W.2/Doctor after examining the appellant, fixed the disability of the appellant as 52%. Due to the injuries, the appellant could not do the work as she was doing earlier. The appellant was working as a building construction helper and was earning a sum of Rs.15,000/- per month at the time of accident. The Tribunal fixed a meagre sum of Rs.4,000/- per month as notional income of the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that as per the disability certificate, the appellant suffered only 52% disability. The Tribunal erroneously fixed the disability as 58%. P.W.2/Doctor has not assessed the disability for the whole body. The Tribunal without converting the same to whole body, erroneously granted compensation for entire 58% disability by adopting multiplier method, which is excessive. The Total compensation awarded by the Tribunal is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company through "Video-conferencing" and perused the entire materials on record.



9. It is the case of the appellant that in the accident, she suffered fractures on right leg, right thigh and right hip and grievous injuries all over the body. The appellant has taken treatment as in-patient in Annal Gandhi Government Headquarters Hospital, Puthur, Trichy, from 18.11.2014 to 26.12.2014 and underwent surgeries. P.W.2/Doctor after examining the appellant, fixed the disability of the appellant as 58%. A perusal of Ex.P6/Disability certificate shows that the appellant suffered 58% disability. In view of the same, the contention of the learned counsel appearing for the 2nd respondent that the appellant suffered only 52% disability is rejected. P.W.2/Doctor assessed the disability for the part of the body. The Tribunal without converting the same to whole body, applied multiplier and granted compensation for 58% disability. Therefore, the disability assessed by P.W.2/Doctor is converted into whole body and the disability is fixed as 19%. The appellant claimed that he was working as a building construction helper and was earning a sum of Rs.15,000/- per month at the time of accident. She did not file any document to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.4,000/- per month as notional income of the appellant. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. Considering the date of accident, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. The Tribunal erred in fixing the age of the appellant as 60 years. As per Ex.P5/Aadhar card, date of birth of the appellant is 17.04.1973. The accident has occurred on 18.11.2014. Therefore, the age of the appellant is fixed at 41 years at the time of accident. The correct multiplier applicable is '14'. Thus, the compensation awarded by the Tribunal towards loss of future earning capacity is modified to Rs.2,55,360/- (Rs.8,000/- X 12 X 14 X 19/100).

9(i) The appellant has taken treatment as in-patient in Annal Gandhi Government Headquarters Hospital, Puthur, Trichy, from 18.11.2014 to 26.12.2014 and underwent surgeries. The amounts awarded by the Tribunal towards attendant charges, extra nourishment and transportation are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards attendant charges, extra nourishment and transportation are hereby enhanced to Rs.30,000/-, Rs.30,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any compensation towards loss of amenities. Hence, a sum of Rs.20,000/- is awarded towards loss of amenities. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of future earning capacity	2,22,720	2,55,360	Enhanced
2.	Medical expenses	250	250	Confirmed
3.	Attendant charges	10,000	30,000	Enhanced
4.	Pain and suffering	30,000	30,000	Confirmed
5.	Extra nourishment and transportation	10,000	30,000 10,000	Enhanced
6.	Loss of amenities	-	20,000	Granted
	Total	2,72,970	3,75,610	Enhanced by Rs.1,02,640/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,72,970/- is hereby enhanced to Rs.3,75,610/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on the amount of Rs.1,02,640/- enhanced by this Court as per the order of this Court dated 01.10.2019 made in C.M.P.No.18355 of 2019 in C.M.A.SR.No.78583 of 2019. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar



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To

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1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Perambalur.

2.The Section Officer
V.R.Section
High Court, Chennai.

+2cc to Mr.C.Thangaraju, Advocate, S.R.No.11475

C.M.A.No.4273 of 2019

VBM(CO)
CB(11/10/2021)