



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.NO.3288 OF 2014

R. Dhanalakshmi

...Appellant/Petitioner

vs.

1. J. Rahimkhan

(The 1st respondent remained
ex-parte before the Trial Court)

2. The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai - 600 001.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 13.06.2011 made in MACT.O.P. No.4849 of 2006, on the file of the VI Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr. R. Kalai Arasan

For Respondents : Mr. M. Krishnamoorthy for R2
R1 - Exparte

JUDGMENT

(This case was heard through Video Conferencing)

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 13.06.2011 passed by the Motor Accident Claims Tribunal, VI Court of small Causes, Chennai in MCOP No.4849 of 2006.

2. Heard Mr.R.Kalai Arasan, learned counsel for the Appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellant/claimant sustained injuries as a result of an accident on 19.09.2006 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. The only question that arises for consideration is whether the Appellant/ claimant is entitled for enhancement of compensation or not?



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4. The Tribunal under the impugned Award directed the second respondent to pay the Appellant/claimant a compensation of Rs. 1,45,940/- together with interest and cost as detailed hereunder:

Heads	Amount Awarded by the Tribunal in Rs.
Loss of Income (3,000x 4)	12,000/-
Transportation	5,000/-
Extra nourishment	5,000/-
Damage to clothes	1,000/-
Medical expenses	7,938/-
Pain & Suffering	25,000/-
Disability of 45% at Rs.2,000/-per percentage	90,000/-
Total	1,45,938/-
Rounded off to	1,45,940/-

5. The Appellant/ claimant sustained fracture in her left hip superior pubic rami, fracture of left femur, fracture of left tibial condylar and head injury. The nature of injuries sustained by the Appellant/ claimant has not been disputed by the respondents before the Tribunal. The Doctor has assessed the disability of the Appellant/claimant at 45%. The Tribunal has accepted the same and awarded a compensation of Rs.90,000/- towards disability suffered by the Appellant/claimant calculated at Rs.2,000/- per percentage of disability for the 45% disability. This Court confirms the same as it does not find any infirmity in the said assessment.

6. The Appellant/ claimant had claimed that she was doing saree business and was earning Rs.3,500/- per month at the time of the accident. Since no documentary evidence has been produced, the Tribunal has fixed the notional monthly income of the Appellant/ claimant at Rs.3,000/- per month which in the considered view of this Court is low. Even though, no documentary evidence was produced by the Appellant/ claimant to prove her monthly income, the Tribunal ought to have taken into consideration the year of the accident before assessing the notional monthly income. This Court after giving due consideration to the year of the accident which happened in the year 2006 is of the considered view that the notional monthly income of the Appellant/ claimant will have to be enhanced to Rs.3,500/- instead of Rs.3,000/- erroneously fixed by the Tribunal.

7. The Tribunal has awarded a compensation of Rs.12,000/- towards loss of income to the Appellant/ claimant calculated at



Rs.3,000/- per month for a period of four months ie., for the period of her treatment which in the considered view of this Court is low and it has to be enhanced. This Court, therefore, after giving due consideration to the nature of injuries is of the view that the Appellant/ claimant would have been unable to do her regular avocation at least for a period of 6 months. Since the monthly income of the Appellant/ claimant has been enhanced to Rs.3,500/-, the loss of income for the Appellant/ claimant during the period of her treatment is enhanced to Rs.21,000/- calculated at Rs.3,500/- per month for a period of 6 months instead of Rs.12,000/- calculated at Rs.3,000/- per month for a period of four months erroneously fixed by the Tribunal.

8. The Tribunal has awarded a compensation of Rs.5,000/- towards extra nourishment which in the considered view of this Court is low. Accordingly, this Court enhances the same to Rs.10,000/- instead of Rs.5,000/- erroneously fixed by the Tribunal.

9. Insofar as the compensation awarded by the Tribunal towards transportation at Rs.5,000/- and damage to clothes at Rs.1,000/- is concerned, the same is a just compensation and the same is confirmed by this Court.

10. The Tribunal has awarded a compensation of Rs.7,938/- towards medical expenses based on the medical bills produced by the Appellant/ claimant which has been marked as Ex.P5 and the same is confirmed by this Court.

11. The Tribunal has awarded a compensation of Rs. 25,000/- towards pain and suffering based on the nature of injuries sustained by the Appellant/claimant which in the considered view of this Court is a just compensation and the same is confirmed by this Court.

12. The Tribunal has failed to award any compensation towards attender charges and loss of amenities which the Appellant/ claimant is legally entitled to as per settled law. This Court after giving due consideration to the year of the accident as well as the nature of injuries, awards a compensation of Rs.10,000/- each to the Appellant/ claimant towards attender charges and loss of amenities.

13. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.1,79,940/- instead of Rs. 1,45,940/- awarded by the Tribunal as detailed below:



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Heads	Amount Awarded by the Tribunal in Rs.	Amount Awarded by this Court in Rs.
Loss of Income	12,000/-	21,000/- (3,500 x 6)
Transportation	5,000/-	5,000/-
Extra nourishment	5,000/-	10,000/-
Damage to clothes	1,000/-	1,000/-
Medical expenses	7,938/-	7,938/-
Pain & Suffering	25,000/-	25,000/-
Disability of 45% at Rs.2,000/- per percentage	90,000/-	90,000/-
Attender Charges	---	10,000/-
Loss of amenities	---	10,000/-
Total	1,45,938/-	1,79,938/-
Rounded off to	1,45,940/-	1,79,940/-

14. In the result, the appeal is partly allowed by enhancing the award amount from Rs.1,45,940/- to Rs.1,79,940/-. The second respondent insurance company is directed to deposit the amount awarded by this court, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and cost, to the credit of MCOP.No.4849 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.4849 of 2006 to the bank account of the Appellant/claimant through RTGS within a period of one week thereafter. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

ab/nl

To

1. The VI Judge,
The Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.



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

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+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.50606

C.M.A.NO.3288 OF 2014

KK (CO)
RGA (03/12/2021)