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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.4102 of 2019

Selvi
W/o.Late Nallusamy ... Appellant/ Petitioner
vs

1.P.R.Rajendran
S/o.Ramasamy Gounder

2.M/s.The Oriental Insurance Company
Ltd.,
Divisional Office,
Divya Towers, 15-1, 2nd Floor,
Fort Main Road,
Opp.Fire Station,
Salem - 636 001.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.08.2018 passed in M.C.O.P.No.1146 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondent : No appearance [R1]
Ms.C.Harini
for Mr.N.Vijayaraghavan [R2]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conferencing.

2. For the sake of convenience, appellant herein is referred to as 'Claimant' and second respondent is referred to as 'Insurance Company'.

3. Not being satisfied with the quantum of compensation



awarded by the Tribunal in and by its judgment and decree dated 10.08.2018 passed in M.C.O.P.No.1146 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal, the claimant has filed the present appeal.

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4. The brief facts of the case are as follows:

On 25.11.2015 at about 04.00 p.m., while the claimant was riding pillion in a two-wheeler bearing registration No.TN-28-J-3228 on the Namakkal to Karur NH7 Bye-Pass road, Keerambur junction, a bus bearing Registration No.TN-30-AR-0333, belonging to first respondent and insured with the Insurance Company, driven by its driver in a rash and negligent manner dashed against the two-wheeler, as a result of which the claimant sustained grievous injuries all over the body. Hence, the claimant filed the claim petition seeking compensation in a sum of Rs.15,00,000/-.

5. The said claim was resisted by Insurance Company by filing a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by claimant. They have also denied the age, occupation and income of the claimant. Thus, Insurance Company prayed for dismissal of the claim petition.

6. To prove their claim, the claimant examined herself as PW-1 besides examining Dr.Sivalingam as PW-2 and Dr.Karthik as PW-3 and marked 18 documents as Exs.P1 to P18. On the side of Insurance Company, none were examined and no exhibits were marked.

7. On appreciation of materials and the entire evidence on record, the Tribunal arrived at a finding that the accident had occurred owing to the rash and negligent driving of the bus bearing Registration No.TN-30-AR-0333, belonging to first respondent and held that the Insurance Company, as insurer of the said bus, is liable to pay compensation. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Medical Bills	5,22,400/-
2.	Permanent disability (3000 * 62%)	1,86,000/-
3.	Pain and suffering	45,000/-
4.	For nutrition	15,000/-
5.	Transport expenses	10,000/-
6.	Loss of Income for 3 months (3000 * 3)	9,000/-
	Total	7,87,400/-



8. Learned counsel appearing for claimant submits that in the accident, the claimant suffered the following injuries: (i) polytrauma (ii) left upper limb distal fracture, right and left lower limb both bone fracture (iii) Head injury - left temporal contusion (iv) Grade 2 open right proximal tibia fracture (v) Grade 1 open left proximal tibia fracture and (vi) closed comminuted left distal radius fracture and other injuries. The claimant was admitted at Neuro Foundation hospital for 2 days i.e. 25.11.2015 and 26.11.2015, thereafter, she was shifted to Ganga Hospital, Coimbatore, wherein she took treatment for 12 days i.e. 26.11.2015 to 07.12.2015. Again, she was admitted at Ganga Hospital, Coimbatore and took treatment for 8 days i.e. 06.04.2016 to 13.04.2016. Totally, the claimant underwent treatment for 22 days as an in-patient. During such time, operation was performed for fracture of both legs, left wrist and plate and screws were fitted. The claimant had also undergone physiotherapy from 14.04.2016 to 08.08.2016. Doctor had assessed the disability at 62%. The claimant was a coolie and due to the injuries suffered by her in the accident, she is unable to carry on her avocation as she was doing before. In such circumstances, the Tribunal ought to have applied multiplier in awarding compensation. Instead, the Tribunal had awarded only a sum of Rs.3,000/- per percentage of disability. The amount awarded under the other heads is also on the lower side. Thus, learned counsel prays for enhancement of compensation considering the nature of injuries suffered by the claimant.

10. This Court has considered the rival submissions and perused the materials on record.

12. On a perusal of records, this Court finds that the claimant underwent treatment as in-patient for 22 days. However,



as rightly submitted by learned counsel appearing for Insurance Company absolutely no document was produced on the side of claimant to establish that the claimant had suffered loss of earning power. Under such circumstances, this Court is of the view that it would not be proper to apply multiplier in this case. However, considering the nature of injuries suffered by the claimant, the award of Rs.3,000/- per percentage of disability is on the lower side and hence, the same is enhanced to Rs.5,000/- per percentage of disability. Accordingly, the compensation payable under the head 'permanent disability' would be Rs.3,10,000/- (5000 * 62). The claimant was a coolie and due to the injuries suffered by him, he would find it difficult to carry on his avocation as he was doing before. Considering the nature of injuries suffered by the claimant, this Court is of the view that the amount awarded under the other heads is also on the lower side. Accordingly, the sum of Rs.45,000/- awarded under the head 'pain and suffering' is enhanced to Rs.2,00,000/-, the sum of Rs.15,000/- awarded under the head 'for nutrition' is enhanced to Rs.30,000/-. The claimant would have visited the hospital for taking treatment for several times and hence, the sum of Rs.10,000/- awarded towards 'transportation' is enhanced to Rs.25,000/-. Further, this Court finds that no sum has been granted towards attender charges, loss of amenities and future medical expenses. Considering the nature of injuries suffered by the claimant, a sum of Rs.2,00,000/- is awarded towards future medical expenses and a sum of Rs.1,00,000/- each is awarded under the heads 'attender charges' and 'loss of amenities'. In all other aspects, the award of the Tribunal is hereby confirmed.

13. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Award of the Tribunal (in Rs.)	Award of this Court (in Rs.)
1.	Medical Bills	5,22,400/-	5,22,400/-
2.	Permanent disability	1,86,000/-	3,10,000/-
3.	Pain and suffering	45,000/-	2,00,000/-
4.	Future medical expenses	-	2,00,000/-
5.	Loss of amenities	-	1,00,000/-
6.	Attender charges	-	1,00,000/-
7.	For nutrition	15,000/-	30,000/-
8.	Transport expenses	10,000/-	25,000/-



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Sl. No.	Compensation awarded under the head	Award of the Tribunal (in Rs.)	Award of this Court (in Rs.)
9.	Loss of Income for 3 months (3000 * 3)	9,000/-	9,000/-
	Total	7,87,400/-	14,96,400/-
	Rounded off to	-	15,00,000/-

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.7,87,400/- awarded by the Tribunal is hereby enhanced to Rs.15,00,000/-. The Insurance Company is directed to deposit the modified compensation of Rs.15,00,000/-, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of this judgment. On such deposit being made, the claimant is entitled to withdraw the same together with interest, on due application. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gm

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

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

+2CC to Mr.C.Thangaraju, Advocate, Sr.No.22108,22553

C.M.A.No.4102 of 2019

NRL (CO)
SB(15/11/2021)