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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1958 OF 2020

Sakthi

.. Appellant

..Vs..

1.Premalatha

2.United India Insurance Co. Ltd.

Branch Office - III, Arjuna towers
248/164, Cherry Road, Salem-636 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2019 made in M.C.O.P.No.875 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran
for Mr.C.Paraneedharan

For R2 : Ms.I.Malar

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 27.09.2019 made in M.C.O.P.No.875 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.The appellant is claimant in M.C.O.P.No.875 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. She filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 05.12.2017.



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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said bus to pay a sum of Rs.5,30,181/- 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 the appellant was working as an agricultural coolie in her own lands and was earning a sum of Rs.18,000/- per month. The Tribunal without considering the same, erred in fixing notional income of the appellant as Rs.6,500/- per month. In the accident, the appellant suffered fractures, open circumferential degloving injury in left lower limb extending from proximal thigh to distal leg, closed fracture in left 5th toe and stress induced hyperglycemia. The appellant has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore, from 06.12.2017 to 23.12.2017 for 18 days and again from 04.01.2018 to 13.01.2018 for ten days and underwent multiple surgeries. Wound debridement and split skin grafting were done. Due to the injuries, she could not do the work as she was doing earlier. The Medical Board examined the appellant and certified that the appellant suffered 20% disability. The Tribunal awarded a sum of Rs.3,000/- per percentage of disability, which is meagre. The accident is of the year 2017 and the Tribunal ought to have awarded a sum of Rs.5,000/- per percentage of disability. The Tribunal has not awarded any compensation towards future medical expenses. The amounts awarded by the Tribunal towards pain and suffering, loss of income and extra nourishment are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant failed to prove the avocation and income. In the absence of material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant, which is not meagre. The amounts awarded by the Tribunal under different heads are not meagre. The appellant is not entitled to any enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.



8. From the materials on record, it is seen that it is the contention of the appellant that in the accident, she sustained multiple fractures and grievous injuries all over the body. The Medical Board examined the appellant and certified that the appellant suffered 20% disability. The Tribunal fixed the disability as 20% and awarded a sum of Rs.3,000/- per percentage of disability. The accident is of the year 2017 and the amount fixed by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is hereby enhanced to Rs.1,00,000/- (Rs.5,000/- X 20%).

8(i) The appellant has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore, from 06.12.2017 to 23.12.2017 for 18 days and again from 04.01.2018 to 13.01.2018 for ten days and underwent multiple surgeries. The amounts awarded by the Tribunal towards extra nourishment, attendant charges and damage to clothes are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, Rs.25,000/- each is awarded towards extra nourishment and attendant charges and Rs.2,000/- is awarded towards damage to clothes.

8(ii) According to the appellant, she was working as an agricultural coolie in her own lands and was earning a sum of Rs.18,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to income, the Tribunal fixed a sum of Rs.6,500/- per month as notional income of the appellant, which is meagre. The accident is of the year 2017 and the notional income of the appellant is fixed at Rs.10,000/- per month. Due to the injuries, the appellant would not have attended the work at least for a period of six months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.60,000/- (Rs.10,000/- X 6). The appellant has not produced any document to prove that she is still taking treatment. Therefore, the appellant is not entitled to any compensation towards future medical expenses. 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.	Pain and suffering	20,000	20,000	Confirmed
2.	Loss of income	39,000	60,000	Enhanced
3.	Medical expenses	3,45,181	3,45,181	Confirmed
4.	Transportation	15,000	15,000	Confirmed
5.	Extra nourishment	15,000	25,000	Enhanced
6.	Attendant charges	15,000	25,000	Enhanced
7.	Damage to clothes	1,000	2,000	Enhanced
8.	Loss of amenities	20,000	20,000	Confirmed
9.	Permanent disability	60,000	1,00,000	Enhanced
	Total	5,30,181	6,12,181	Enhanced by Rs.82,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,30,181/- is hereby enhanced to Rs.6,12,181/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent 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 V)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge - I
Motor Accident Claims Tribunal
Salem.

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

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.1041

C.M.A.No.1958 of 2020

SSV(CO)
CS/31/08/2021