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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

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

C.M.A.NO.2449 OF 2018

M.Noorjahan

.. Appellant/
Petitioner

Versus

1. N.Vengatesh

2. The New India Assurance Co. Ltd.,
Motor third party claims office,
No.232, Bombay Mutual Building,
6th Floor, N.S.C. Bose Road, Chennai 1.

.. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 07.07.2018 made in MCOP.No.3436 of 2016 on the file of the Motor Accident Claims Tribunal/IV Court of Small Causes, Chennai.

For appellant	:	Mr.R.Nalliyappan
For respondents	:	Mr.S.Dhakshnamoorthy for R2
	:	R1 was set ex-parte before the Tribunal

J U D G M E N T

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video conferencing.

2. Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai, in MCOP.No.3436 of 2016, the present appeal has been filed by the claimant for enhancement of the compensation amount.

3. It is the case of the appellant/claimant that on 06.04.2016 at 12.30 hours, while she was driving a two wheeler bearing Registration No.TN 14 A 0940 from North to South



direction on Rajiv Gandhi Salai, near Semmanchery Police Check Post, a Car bearing Registration No.TN 14 D 9307 came in a rash and negligent manner being driven by its driver and dashed against her two wheeler. Due to the impact, the appellant/claimant sustained severe injuries.

4. It is the further case of the appellant/claimant that she was working as a Software Engineer in CTS, Chennai and earning a sum of Rs.50,000/- per month. After the accident, her earning capacity got affected. Hence, she made a claim for a sum of Rs.1,22,00,000/- as compensation.

5. The claim petition of the claimant was resisted by the second respondent/Insurance Company by filing a counter statement denying the manner of the accident as projected by the claimant in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim, the claimant examined herself as PW1, besides examining 2 other witnesses as Pws.2 & 3 and marked Exs.P1 to P30. On the side of the Insurance Company, neither any oral evidence was adduced nor any document was marked.

7. The Tribunal, after analysing the entire evidence, fixed the disability of the claimant at 50% as against the assessment made by the Doctor at 80% and made a calculation on that basis and awarded a sum of Rs.72,30,584/- as compensation. Further, the Tribunal held that the accident had occurred due to the rash and negligent driving of the Car bearing Registration No.TN 14 D 9307 and directed the Insurance Company to pay the above compensation. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Compensation awarded by the Tribunal under the Heads	Amount in Rs.
1.	Transportation and Nourishing Food	50,000
2.	Attender Charges	53,000
3.	Medical Expenses	6,27,584
4.	Loss of Earning Power	63,00,000
5.	Damages for pain, suffering and trauma	1,00,000
6.	Loss of Amenities	1,00,000
	Total	72,30,584



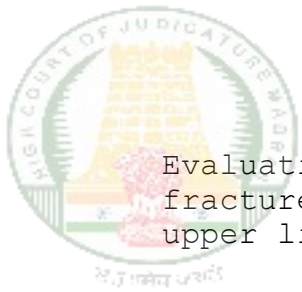
8. The learned counsel for the appellant/claimant submitted that on account of the said accident, the appellant/claimant sustained injuries such as i) Polytrauma, ii) Traumatic Brain Injury-Left Frontotemperoparietal Acute EDH and SDH, iii) Right Humerus Distal 3rd Fracture and iv) Right Humerus Proximal 3rd Fracture. The Assistant Civil Surgeon of Government Hospital Ambur, Vellore examined the claimant and issued Ex.P16, Disability Certificate stating that she suffered 80% disability. However, the Tribunal has reduced the disability of the appellant/claimant to 50% without assigning any valid reason. Further, the appellant is not in a position to carry on her normal day-to-day work, as she was doing before the accident. PW3, Senior Executive of the CTS in his evidence had stated that on account of the disability, the appellant is not in a position to continue her job. Under such circumstances, the Tribunal, instead of fixing the disability of the claimant at 50%, ought to have fixed the disability of the claimant at 80% and calculated the compensation under the head "Loss of Earning Power" by adopting multiplier method. Thus, the learned counsel for the appellant prays for enhancement of the compensation amount under the head loss of earning power.

9. That apart, the learned counsel for the appellant/claimant submitted that the amounts awarded by the Tribunal under the other heads are also not adequate, and hence, they need proper enhancement.

10. Per contra, the learned counsel for the second respondent/Insurance Company made his submissions supporting the award passed by the Tribunal.

11. This Court considered the rival submissions and perused the materials available on record.

12. It is the case of the appellant/claimant that on account of the accident, the appellant/claimant sustained the following injuries namely i) Polytrauma, ii) Traumatic Brain Injury-Left Frontotemperoparietal Acute EDH and SDH, iii) Right Humerus Distal 3rd Fracture, iv) Right Humerus Proximal 3rd Fracture. The appellant/claimant took initial treatment at Global Health City, Chennai from 06.04.2016 to 6.06.2016 for the injuries suffered by her in the accident. Thereafter, she was admitted in the same Hospital and took treatment from 03.08.2016 to 16.08.2016 and from 22.01.2017 to 27.01.2017, and a surgery was done, namely "Left fronto Temperoparietal own bone cranioplasty and Infected bone flap removal with wound gaping in frontal region with exposed bone". Once again, the appellant was admitted in another Hospital namely Narayana Health Hospital, Bangalore from 09.06.2016 to 19.06.2016, 03.03.2017 to 06.03.2017, 9.03.2017 to 14.03.2017 and 30.03.2018 to 02.04.2018 for "Polyarthralgia under



Evaluation, K/C/O RTA left EDH + SDH + Right upper limb fracture, S/P Left FTP decompressive craniectomy, S/P Right upper limb orif and Scar Epilepsy."

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13. PW3, Senior Executive of the CTS, in which the claimant had worked, in his evidence has clearly stated that the appellant/claimant is not in a position to continue her job. The Doctor from Government Hospital Ambur, Vellore, after examining the appellant/claimant, had assessed the disability at 80% and issued Ex.P16, Disability Certificate. However, the Tribunal had fixed the disability only at 50% without assigning any valid reason. Hence, considering the submission of PW3 and the medical reports, we are of the opinion that fixing the disability of the appellant/claimant at 70% would be just and proper. At the time of the accident, the deceased was earning a sum of Rs.50,000/- as monthly income, which is evident from Ex.P13, appointment order, Ex.P14, pay slip, Ex.P29, Salary Statement, and Ex.P27 & 28, Incentive and salary revision letters and hence, this Court fixes Rs.50,000/- as the monthly income of the appellant/claimant.

14. If Rs.50,000/- is fixed as monthly income and 40% of the same is added towards future prospects, the actual monthly income works out to Rs.70,000/- [50,000 + 20,000]. Resultantly, the annual income comes to Rs.8,40,000/- [70,000 x 12]. Considering the age of the appellant/claimant being 37 years at the time of the accident, if multiplier "15" is applied, the amount comes to Rs.1,26,00,000/- [8,40,000 x 15]. The amount proportionate to 70% disability comes to Rs.88,20,000/- [1,26,00,000 x 70%], which will be the just and fair compensation towards "Loss of Earning Power". Thus, the sum of Rs.63,00,000/- awarded by the Tribunal under the head "Loss of Earning Power" is enhanced to a sum of Rs.88,20,000/-

15. Further, considering the fact that the appellant/victim is not in a position to continue her day-to-day activities as she was doing before the accident, the sum of Rs.1,00,000/- awarded by the Tribunal under the head of "Loss of Amenities" is enhanced to Rs.2,00,000/-.

16. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed.

17. The total compensation is re-determined as mentioned below:



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S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Transportation and Nourishing Food	50,000	50,000
2.	Attender Charges	53,000	53,000
3.	Medical Expenses	6,27,584	6,27,584
4.	Loss of Earning Power	63,00,000	88,20,000
5.	Damages for pain, suffering and trauma	1,00,000	1,00,000
6.	Loss of Amenities	1,00,000	2,00,000
	Total	72,30,584	98,50,584

18. The total compensation of Rs.72,30,584/- awarded by the Tribunal is hereby enhanced to Rs.98,50,584/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Insurance Company is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. With the above observations and directions, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Deputy Registrar(Accounts)

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Sub Assistant Registrar

pvs

To

1. The Motor Accident Claims Tribunal /
IV Court of Small Causes, Chennai
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.23786

C.M.A.No.2449 of 2018

RLD(CO)

CS/25/10/2021