



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.705 of 2016

K.Florence Rajini

.. Appellant/Claimant

Vs.

1.E.P.Thiyagarajan

2.M/s.New India Ass. Co. Ltd.,  
C/o. Motor III Party Claims Office,  
No.45, Moore Street,  
Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.07.2012 made in M.C.O.P.No.4059 of 2008 on the file of the Motor Accident Claims Tribunal, XVI Additional District Court, Chennai.

|               |   |                     |
|---------------|---|---------------------|
| For Appellant | : | Mr.T.G.Balachandran |
| For R1        | : | Mr.G.Ravi Shankar   |
| For R2        | : | Mrs.R.Sreevidhya    |

#### J U D G M E N T

(The matter is heard through "Video Conferencing".)

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 04.07.2012 made in M.C.O.P.No.4059 of 2008 on the file of the Motor Accident Claims Tribunal, XVI Additional District Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.4059 of 2008 on the file of the Motor Accident Claims Tribunal, XVI Additional District Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.10.2008.



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 car belonging to 1<sup>st</sup> respondent and directed the respondents 1 & 2 to jointly and severally pay a sum of Rs.1,91,235/- 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 sustained fracture of right iliac bone, right acetabulum and interior public ramus and multiple injuries all over the body. She has taken treatment as inpatient at Malar Hospital for 19 days from 14.10.2008 to 01.11.2008. P.W.3/Doctor examined the appellant and certified that she suffered 45% disability and issued Ex.P12/disability certificate to that effect. The Tribunal without assigning any valid reason, erroneously reduced the percentage of disability from 45% to 35% and granted compensation only for 35% disability. The Tribunal ought to have fixed the disability of the appellant at 45% as assessed by P.W.3/Doctor and granted compensation for 45% disability. Due to the injuries sustained by the appellant in the accident, she could not do any work as she was doing earlier and hence, the Tribunal ought to have adopted multiplier method and awarded compensation for future loss of income. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. The amounts awarded by the Tribunal towards loss of income, pain and sufferings, extra nourishment and transportation are meagre and prayed for enhancement of compensation.

6.The learned counsel appearing for the 1<sup>st</sup> respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

7.The learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the Tribunal reduced the percentage of disability assessed by P.W.3/Doctor from 45% to 35% on the ground that P.W.3/Doctor has not deposed that on what basis he arrived the percentage of disability. Hence, the appellant is not entitled to compensation for 45% disability. The appellant has not proved that she suffered functional disability and lost her entire earning capacity. Hence, she is not entitled to any amount towards future loss of income by adopting multiplier method. The Tribunal considering the nature of injuries and disability suffered by the appellant, has awarded a



sum of Rs.1,91,235/- as compensation to the appellant, which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials on record.

9. From the materials available on record, it is seen that it is the case of the appellant that in the accident she sustained fracture of right iliac bone, right acetabulum and interior pubic ramus and multiple injuries all over the body. P.W.3/Doctor examined the appellant and certified that the appellant suffered 45% disability and issued Ex.P12/disability certificate to that effect. The Tribunal reduced the percentage of disability from 45% to 35% on the ground that P.W.3/Doctor has not deposed that on what basis he arrived the percentage of disability. The respondents have not let in any contra evidence to disprove the evidence of P.W.3/Doctor and Ex.P12/disability certificate. Further, the reason given by the Tribunal for reducing the percentage of disability from 45% to 35% is not correct. Therefore, the appellant is entitled to compensation for 45% disability. The appellant has not proved that she suffered functional disability and lost her earning capacity. Hence, she is not entitled to any compensation towards loss of earning capacity by adopting multiplier method. The accident is of the year 2008 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.90,000/- (Rs.2,000/- X 45% of disability).

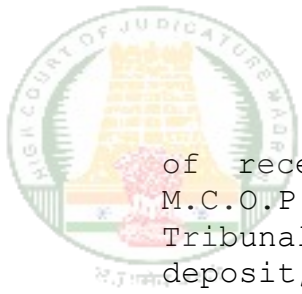
10. It is the contention of the appellant that at the time of accident, she was aged 43 years, working as Teacher at Noon Meals Centre, Velacherry, Chennai - 600 042 and was earning a sum of Rs.4,000/- per month. The accident occurred in the year 2008. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.7,000/- per month is fixed as her notional income. The appellant has taken treatment as inpatient at Malar Hospital for 19 days from 14.10.2008 to 01.11.2008. Due to the injuries sustained by the appellant in the accident, she would not have attended her work at least for a period of five months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.35,000/- (Rs.7,000/- X 5 months). Considering the nature of injuries and disability suffered by the appellant, the amounts awarded by the Tribunal



towards pain and sufferings, transportation & extra nourishment are enhanced to Rs.20,000/- and Rs.15,000/- respectively as the amounts awarded by the Tribunal are meagre. The Tribunal has not awarded any amounts towards attendant charges, loss of amenities and damages to clothes. Considering the nature of injuries, period of treatment and disability suffered by the appellant, she is entitled to a sum of Rs.15,000/- towards attendant charges, Rs.15,000/- towards loss of amenities and a sum of Rs.1,000/- towards damages to clothes. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description                        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                         | 70,000/-                        | 90,000/-                          | Enhanced                               |
| 2.    | Pain and sufferings                | 10,000/-                        | 20,000/-                          | Enhanced                               |
| 3.    | Medical expenses                   | 85,280/-                        | 85,280/-                          | Confirmed                              |
| 4.    | Transportation & Extra nourishment | 7,000/-                         | 15,000/-                          | Enhanced                               |
| 5.    | Loss of Income                     | 18,955/-                        | 35,000/-                          | Enhanced                               |
| 6.    | Attendant charges                  | -                               | 15,000/-                          | Granted                                |
| 7.    | Loss of amenities                  | -                               | 15,000/-                          | Granted                                |
| 8.    | Damages to clothes                 | -                               | 1,000/-                           | Granted                                |
|       | Total                              | Rs.1,91,235/-                   | Rs.2,76,280/-                     | Enhanced by Rs.85,045/-                |

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,91,235/- is hereby enhanced to Rs.2,76,280/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 & 2 are jointly and severally 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 twelve weeks from the date



of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4059 of 2008 on the file of the Motor Accident Claims Tribunal, XVI Additional District Court, Chennai. 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 by making necessary applications before the Tribunal. It is made clear that the appellant is not entitled to any interest for the delay period on Rs.85,045/-, the amount now enhanced by this Court as per the order of this Court dated 21.03.2016 made in M.P.No.2 of 2015 in C.M.A.SR.No.105120 of 2014. No costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

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To

1.The XVI Additional District Judge,  
Motor Accident Claims Tribunal,  
Chennai.

2.The Section Officer,  
VR Section,  
High Court, Madras.

+lcc to Mr.T.G.Balachandran, Advocate SR.No.4887  
+lcc to M/s.R.Sreevidhya, Advocate SR.No.4783

C.M.A.No.705 of 2016

SV(CO)  
CB(11/03/2022)