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C.M.A. No.2186 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

C.M.A. No.2186 of 2018

N. Kameswari ..... Appellant  
versus

1. S. Venlatesam  
2. The HDFE ERGO General Insurance Co. Ltd.,  
New No. 528, Old No. 559, Anna Salai,  
Teynampet,  
Chennai - 18. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award passed in MCOP No.1059 of 2012 dated 11.04.2016, on the file of the V - Small Causes Court Chennai/Motor Accident Claims Tribunal, Chennai, in so far as the same is against the claim of the appellant and award full and just compensation.

For Appellant : M/s. Anand and Suryas  
For Respondents : M/s. J. Micheal Visvasam  
for R2



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## **JUDGMENT**

The claimant in M.C.O.P. No. 1059 of 2012 on the file of the V-Small Causes Court Chennai/Motor Accident Claims Tribunal is the appellant herein.

### **Brief facts of the claim petition:**

2. When the appellant was standing on the left side of the road opposite to BSNL Micro Building Office on 27.12.2011 at around 2:45 pm, a car bearing Registration No.TN-04-X-3749 came from P and T Quarters Road. According to her, the said car was driven in a rash and negligent manner and hit her, as a result of which she sustained injuries in her right leg and she was taken to Government Stanley hospital, Chennai for treatment. It is stated that the treatment continued for 48 days. She was aged 32 years at the time of accident and she claimed that she was working as a lady security guard and was earning Rs.9000/- per month. However, no document for salary had been produced to substantiate the aforementioned statement. The second respondent insurance company/insurer of the offending car, who was jointly sued, had contested the claim petition.



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3. The judgment was delivered on 11.04.2016, granting compensation of Rs,2,33,000/-. Dissatisfied with such quantum, the appellant had filed the present appeal.

4. Heard the learned counsel for the appellant and learned counsel for the second respondent.

5. The claim petition had been filed under Section 166 of the Motor Vehicles Act 1988 and therefore burden was transferred to the claimant to establish negligence on the part of the driver of the vehicle bearing Registration No.TN-04-X-3749, and that was the first issue which was framed by the Tribunal for consideration and after examining the relevant records particularly, Ex.P.4 , copy of F.I.R and Ex.P.5, Rough Sketch of the scene of occurrence, the tribunal came to the conclusion that accident occurred only due to the rash and negligent manner in which the car was driven. Since the insurance company is not questioning in appeal that particular finding, let me also confirm that finding of the Tribunal. Thereafter, the tribunal proceeded to determine the compensation that could



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be granted. The Tribunal considered the claim under 6 heads, and the first of which was transportation, nourishing food and miscellaneous expenses and under this head, determined that a sum of Rs. 15,000/- could be granted.. Not much issue had been raised over grant of such compensation and I would also not interfere with that aspect. Then, the Tribunal granted a sum of Rs. 12,000/- as attender charges, taking into consideration that she was hospitalized for 48 days. This would indicate that the Tribunal had calculated at a reasonable sum of Rs. 250 per day towards attender charges, having been admitted in a Government hospital, I also hold that grant of Rs. 12,000/- at Rs.250 per day was a reasonable amount.

6. The Tribunal also determined the notional income at Rs. 6500 per month. The learned counsel for the appellant however took objection for that particular assessment and stated that a sum of Rs,10,000/- should be determined as the monthly income. However, this was objected to by the learned counsel for the second respondent/insurance company, who pointed out that if she was employed as a security guard in a named security agency, to establish that particular fact of employment, it would have been possible



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for her to produce relevant documents and in the absence of production of such documents, the determination of the monthly income at Rs.6500/- was actually reasonable. Even before this court, no documents have been placed as additional documents to substantiate the earning or the employment of the appellant. Therefore, I would also not go into that particular aspect and hold that grant of notional income at Rs.6500 is reasonable. Thus, the amount of Rs. 26,000/- towards the loss of earning during the period of treatment, as granted by the Tribunal, is confirmed.

7. During the course of trial, the claimant examined the Medical Record Technician from the Government Stanley hospital as P.W.2 to produce documents relating to the treatment particularly the case sheet and other documents towards the treatment for the injury suffered by the claimant. They also examined Dr. Mathiazhagan as P.W.3 who issued the disability certificate Ex.P.10, and it is claimed by the learned counsel for the appellant that he is an Orthopedic Surgeon and not what is called a stock witness who normally assesses disability of any claimant and, who is produced as a witness practically in all the tribunals. It is claimed by the



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learned counsel for the appellant that P.W.3. is a specialist in this field.

Having examined the appellant he had assessed the disability at 50 per cent.

But, at the same instance, the tribunal had proceeded to determine, the compensation to be granted under the head disability at Rs. 3000/- per percentage of permanent disability with 30 percentage of disability. This method had been objected to by the learned counsel for the appellant, who pleaded that a multiplier method may be adopted.

8. Let me therefore interfere with that particular calculation. At the rate of Rs.6500/- per month, for one year the income comes to Rs.78000/-. If the reasonable multiplier is fixed at 16, since her age was 32 years at the time of accident, then the amount with a multiplier of 16 comes to Rs.12,48,000/- and calculating 30 % disability out of it, the net amount towards loss of income would come to Rs.3,74,400/-. The Tribunal had also granted a sum of Rs.40,000/- towards loss of amenities, which cannot be granted.



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9. In view of the above calculation, the compensation now granted would be as follows;

| <i><b>Heads</b></i>                  | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Amount awarded<br/>by this Court<br/>(Rs.)</b></i> |
|--------------------------------------|------------------------------------------------------------|----------------------------------------------------------|
| 30% disability - Loss of income      | 90,000/-                                                   | 3,74,000/-                                               |
| Pain, suffering & Trauma             | 50,000/-                                                   | 50,000/-                                                 |
| Loss of amenities                    | 40,000/-                                                   | -----                                                    |
| Loss of earning during the period    | 26,000/-                                                   | 26,000/-                                                 |
| Transportation and extra nourishment | 15,000/-                                                   | 15,000/-                                                 |
| Attender charges                     | 12,000/-                                                   | 12,000/-                                                 |
| Total                                | <b>2,33,000/-</b>                                          | <b>4,77,000/-</b>                                        |

10. Thus, the enhanced amount awarded by this court as enhanced compensation is Rs.2,44,400/-

11. In the result, the appeal filed by the appellant / claimant, stands allowed by enhancing the compensation from Rs.2,33,000/- to Rs.4,77,000/- as indicated above. No costs.



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12. The second respondent / Insurance Company is directed to deposit the enhanced award amount of Rs, 2,44,400/- as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition viz. 1.03.2012 till the date of deposit to the credit of MCOP No.1059 of 2012 on the file of V Judge, Court of Small Causes, Motor Accident Claims Tribunal at Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the enhanced award amount directly to the bank account of the appellant/claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

**03.03.2021**

mrn  
Index : Yes / No  
Internet : Yes / No  
Speaking / Non speaking



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To :

1. V - Small Causes Court Chennai/  
Motor Accident Claims Tribunal,  
Chennai.

2. The Section Officer,  
V.R. section,  
High Court, Madras - 104.



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**C.V.KARTHIKEYAN, J.**

**(mrn)**

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