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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3799 of 2019

Mageswari ... Appellant/Petitioner
Vs.

1.Sekar

2.The Manager

The Oriental Insurance Company Limited
Hub, 3rd party Claims, Vijayalakshmi Complex
First Floor, No.32/13, Face No.2, Sathuvachari
Vellore.

3.Iyyappan ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to enhance and to set aside the award dated 31.07.2017 made in M.C.O.P.No.349 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant :Ms.A.Subadra for Ms.M.Malar

For Respondents :Mr.M.Krishnamoorthy for R2
R1-Exparte
R3-Served, No appearance

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This appeal has been filed by the claimant seeking enhancement of compensation against the award dated 31.07.2017 made in M.C.O.P.No.349 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.



2.The appellant has filed the M.C.O.P.No.349 of 2016 before the Motor Accident Claims Tribunal (Special Sub Court), Tiruvannamalai, seeking compensation of Rs.35 lakhs. It is not in dispute that she suffered injuries in an accident which had taken place on 27.02.2016. The Medical Board, Tiruvannamalai assessed her disability at 50%.

3.It is the case of the appellant that she was working as a Plant Supervisor in Srinivasa Aqua Tech Compnay, thereby earning a sum of Rs.15,000/- per month. Though the Tribunal has applied multiplier theory, in this case, the grievance of the appellant is that notional income fixed by the Tribunal is on the lower side. It is also contended by the learned counsel for the appellant that the Tribunal failed to award the amount under the head of loss of amenities and attendant charges.

4.The learned counsel appearing for the Insurance Company would submit that the award is fair and reasonable and the appellant is not entitled for enhancement in this appeal. Further, the appellant has not produced her salary certificate and also not examined the employer to prove her income, at the time of accident.

5.The oral evidence of P.W.1, proves that she was employed in a private company. Hence, it would be appropriate to fix the income of the appellant as Rs.9,000/- per month. The relevant multiplier is '17' and hence, the loss of earning capacity is assessed at Rs.9,18,000/- (Rs.9,000/- x 12 x 17 x 50%). Ex.P.3 and P4 clearly shows that the appellant took treatment as in-patient from 28.02.2016 to 12.03.2016. Hence the amount awarded under the head 'Medical and Transportation expenses' is confirmed and the appellant is awarded an amount of Rs.50,000/- towards attendant charges. Since the appellant suffered with 50% disability, this Court enhances the amount awarded under the head 'Pain and sufferings' to Rs.1,00,000/- and the amount awarded under the head 'extra nourishment' is enhanced to Rs.12,500/-. The amount awarded under the head 'Loss of income during treatment period' is hereby confirmed. In addition to that an amount of Rs.50,000/- is granted towards 'loss of amenities'. Hence, the compensation awarded by the Tribunal to the appellant/claimant is re-quantified as follows:-



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Heads	Amount awarded by the Tribunal Rs.	Amount modified/ awarded by this Court
Loss of income	5,10,000/-	9,18,000/-
Medical and Transportation Expenses	3,31,500/-	3,31,500/-
Pain and Sufferings	50,000/-	1,00,000/-
Loss of income during treatment period	30,000/-	30,000/-
Extra nourishment	10,000/-	12,500/-
Loss of amenities	---	50,000/-
Attendant charges	---	50,000/-
Total	9,31,000/-	14,92,000/-

6.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby enhanced to Rs.14,92,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount 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 claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period. No costs.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
Special Sub Court, Tiruvannamalai.



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

+lcc to M/s.M.Malar, Advocate SR.No.10366

C.M.A.No.3799 of 2019

GSM(CO)
CB(20/04/2022)