



C.M.A.No.3504 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3504 of 2019

Anitha

... Appellant

Versus

1.E.Vasanth Kumar

2.National Insurance Company Limited,
(Motor Third Party Cell),
No.751, Anna Salai, 3rd Floor,
Chennai – 600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.07.2016 and made in M.A.C.T.O.P. No.4927 of 2014 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant

... Ms. M.Malar

For Respondents

... Mr.S.Vadivel
for R2

R1- Ex-parte



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ORDER

Aggrieved by the meagre compensation passed by the Motor Accident Claims Tribunal (IV Small Causes Court, Chennai) the claimant is before this Court.

2. The brief facts preceding the filing of this appeal are as follows:-

2.1 The claimant has sustained injuries in a road accident on 28.04.2014. In the accident, she had suffered the following injuries:

- a. Fracture of Pelvis;*
- b. Fracture of Superior pubic rami right side;*
- c. Fracture spinous process of C4-C5;*
- d. Severe head injury;*
- e. Multiple injuries all over the body.*

2.2 The claimant had thereafter filed M.A.C.T.O.P. No.4927 of 2014 seeking compensation for a sum of Rs.15,00,000/- (Rupees Fifteen Lakh). The petition was filed against the owner of the motorcycle, which had caused the accident and its insurer. However, both the respondents remained



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ex-parte and ultimately, ex-parte award came to be passed. The Tribunal held negligence with the rider of the first respondent vehicle and taking into account the injuries and the period of treatment, etc., arrived at the following compensation:

<i>Heads</i>	<i>Amount in Rupees</i>
Disability	1,20,000
Pain and Suffering	35,000
Extra Nourishment	4,000
Transport to Hospital	4,000
Damages to clothes	750
Attender Charges	7,400
Medical expenses	5,000
Future Medical Expenses	3,000
Loss of Income	13,000
Loss of Amenities	5,000
Total	1,97,150
Rounded off	1,97,200

Challenging the same the appellant is before this Court.

3. The grievance of the appellant/ claimant are as follows:-

3.1. the notional income that was adopted was only at Rs.5,000/-



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though the claimant had pleaded that she was a computer operator with M/s.Venkateswara Enterprises, Maraimalai Nagar, Kanchipuram District and also doing saree business, through which she would earn a sum of Rs.13,500/- per month. She would also submit that the Tribunal had not considered her injuries and had awarded only a sum of Rs.35,000/- towards pain and sufferings. She has been admitted in the hospital as an in-patient for 35 days and charges for the person, who attended her, has been awarded only at a sum of Rs.7,400/- and that apart, loss of income of only a sum of Rs.13,000/- has been awarded.

4. On the contrary, Mr.S.Vadivel appearing on behalf of the second respondent Insurance Company would submit that the claimant has not produced any proof to show that she has been working as computer operator or that she is engaged in the business of selling sarees. Therefore, the notional income of Rs.5,000/- was fair and he would also submit that the claimant has not let in any evidence for the continuing disability to the claimant.



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5. Heard the counsels appearing on either side.

6. The accident admittedly was in the year 2014. Though the claimant has not produced any documents, even assuming that she was a home maker, notional income should have been fixed at a sum of Rs.10,000/-. The nature of injuries sustained by her, taking into account the evidence of P.W.2 is a partial permanent one. Though P.W.2 has assessed the disability at 90%, the Tribunal has taken a pragmatic view of the injuries and awarded disability at 40%. Since the disability is a permanent partial one, the compensation towards disability should have been calculated on a multiplier basis. The appellant was aged 25 years and therefore a multiplier of 18 ought to have been taken. Therefore, taking into consideration 40% towards disability and a monthly notional income of Rs.10,000/-, the compensation under the head of disability would be Rs.8,64,000/- (Rs.10,000 x 12 x 18 x 40%). An additional sum of Rs.15,000/- can be awarded towards pain and suffering, taking note of the area, where the appellant had suffered fracture. A mere perusal of the discharge summary would show that the appellant had been in inpatient for 33 days and would have suffered intense pain.



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Therefore, the amount under the head of pain and sufferings is enhanced to Rs.50,000/-, for 33 days. The claimant had been in inpatient and being a lady, she would definitely need an attendant with her, for which only a sum of Rs.7,400/- has been awarded in this head and this is enhanced to a sum of Rs.10,000/-. Likewise, the period of treatment and the post recuperation of the claimant would have been for a period of six months, therefore, the loss of income is enhanced as Rs.60,000/-. On all other heads the award of the Tribunal is confirmed. Therefore, the award is modified and the following compensation is awarded:

<i>Heads</i>	<i>Amount in Rupees</i>
Disability	8,64,000
Pain and Suffering	50,000
Extra Nourishment	4,000
Transport to Hospital	4,000
Damages to clothes	750
Attender Charges	10,000
Medical expenses	5,000
Future Medical Expenses	3,000
Loss of Income	60,000
Loss of Amenities	5,000
Total	10,05,750



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01.03.2022

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To

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



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P.T.ASHA. J.,

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