



CMA.No.584 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.584 of 2014

Sumathi

... Petitioner/Appellant

Vs

1. Sri Gnannambal Transport
No.95/2 P.H.Road.
Chennai 600084.

2. M/s National Insurnace Co.Ltd.,
Ambattur Branch
Chennai.

... Respondents/ Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Award dated 23.10.2013 made in MCOP.NO.325 of 2012 on the file of the Motor Accident Claims Tribunal (Addl. District Judge) Ariyalur.

For Petitioner : Mr. A.Murugan.

For Respondent : M/s. Rathna Thara [R.2]

Not ready in notice [R.1]



JUDGEMENT

The petitioner before the Motor Accident Claims Tribunal in M.C.O.P.No.325 of 2012 is the appellant before this Court seeking an enhancement of the award. The facts in brief are as follows:-

2. The appellant had filed the above OP seeking compensation for the injuries sustained by her in a road accident on 25.01.2010. It is her case that on the said date at about 10 p.m., she had gone over to Chennai to receive her relative who was returning from abroad. When she alighted from the bus and attempted to cross the road from west to east and had nearly crossed it the TATA 407 Van bearing Registration No.TN-01-D-9275 owned by the 1st respondent and insured with the 2nd respondent was driven by his driver in a rash and negligent manner. On account of his rash and negligent driving he had hit the petitioner who had sustained grievous injuries to her right hand, and right and left legs. She therefore, sought the compensation of a sum of Rs.6,00,000/-.

3. The 1st respondent remained *ex parte* and the 2nd respondent/ insurance company had filed a counter denying the fact that the driver of the



TATA 407 Van driven it in a rash and negligent manner and submitted that it is only on account of the negligence of the petitioner who had suddenly crossed the road and due to this the accident had taken place.

4. The Tribunal after considering the evidence had held that the accident was caused only on account of the negligence of the driver of the 1st respondent's TATA 407 Van. Thereafter a compensation of a sum of Rs.65,000/- was awarded. Challenging the same the appellant is before this Court.

5. Mr. A.Murugan appearing on behalf of the appellant would submit that the doctor who was examined as P.W.2 has clearly opined that the petitioner has sustained bone fractures to her right leg for which a plate had been inserted with screws and also she had undergone plastic surgery on her right hand. The doctor has assessed the disability had 56% despite this evidence of P.W.2 and Ex.P.9 (Disability Certificate), the Tribunal has only taken the overall disability at 25% and calculated the loss of earning on percentage basis by adopting a notional income of Rs.3,000/-. He would submit that doctor's evidence has not been considered from the correct



perspective.

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6. Mrs.Rantna Tara, learned counsel appearing on behalf of the 2nd respondent /insurance company would however states that P.W.2 is not the doctor who has given initial treatment and that apart, the report has been given without proper examination of the appellant. She would also submit that a perusal of Ex.P.2 would show that the appellant has refused to undergo surgery and had been shifted out of the Shri Balaji Hospital where she was initially admitted. Thereafter, she has taken treatment at the Government Stanley Medical College Hospital, Chennai and the discharge summary would indicate that the treatment has been successful and therefore, the disability certificate which is now pressed into service taken nearly 3 years after the accident cannot be relied upon. She would therefore, submit that the award be confirmed.

7. Heard both the counsels.

8. The appellant would rely upon the disability certificate, Ex.P.9 to contend that the appellant has suffered a permanent disability. However, a



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perusal of Ex.P.3, the discharge summary issued by the Government Hospital Stanely Medical College would indicate that after the surgery had been conducted upon her, her wounds have healed well and the sutures has also been removed. The doctor has opined that she does not suffers from any sensory deficit. The advice on discharge would also indicate that the wound has healed considerably. The disability certificate issued by P.W.2 does not make any reference to the improvement post surgery. The only document which has been considered by the P.W.2 doctor is discharge summary (Ex.P.3). The doctor has not even taken pains to physically examine the appellant afresh, there is nothing to show as to whether there is an improvement in the overall health of the appellant. Even an X-ray has not been taken and therefore, this Court is at loss to understand as to how P.W.2 has arrived at a disability to 56%.

9. Be that as it may, it is seen that the petitioner has been an inpatient for over two months and had undergone a surgery therefore, there is no necessity to award any amount further under the head of disability. However it is seen that no amounts have been paid under the head of transport expenses therefore a sum of Rs.5,000/- shall be paid under this head.



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Likewise, the amounts towards extra nourishment has been granted for a sum of Rs.5,000/- the petitioner has been inpatient for two months therefore, a further sum of Rs.5,000/- is granted under the head of extra nourishment. Taking note of the fact that the petitioner was inpatient for two months a further sum of Rs.20,000/- has been given under the head of pain and sufferings. In all other respects the award is confirmed. Therefore, the reworked compensation would be as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Transportation	Nil/-	5,000/-	Granted
2.	Extra nourishment	5,000/-	10,000/-	Enhanced
3.	loss of earning during hospitalization	5,000/-	5,000/-	Confirmed
4.	loss of future earnings Reduced earning capacity due to the disability (notional)	50,000/-	50,000/-	Confirmed
5.	pain and sufferings	5,000	25,000/-	Enhanced
	TOTAL	65,000/-	95,000/-	Enhanced by Rs.30,000/-

10. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.95,000/- from Rs.65,000/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the



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Tribunal is confirmed. The 2nd respondent/ insurance company is directed to deposit the said amount (Rs.95,000 /-) to the credit of M.C.O.P.No.325 of 2012 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Ariyalur together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the appellant is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. The Tribunal shall not disburse the amounts until proof of payment of the Court fee is produced by the claimant failing which the Tribunal shall get a confirmation from this Court that the Court fee has been paid. No costs.

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Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accident Claims Tribunal
(Addl. District Judge), Ariyalur.

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

P.T. ASHA, J,



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