



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A. No.4250 of 2019

Jayalakshmi

...Appellant/Claimant

Vs.

1.Resico India Pvt. Ltd.,
No.196/4, Mettupalayam Village,
Sriperumbudur Taluk,
Kancheepuram District.

2.ICICI Lombard General Insurance Co. Ltd.,
No.84 & 85, Arihant Plaza,
First Floor, Wall Tax Road,
Chennai - 600 003

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the Judgment and Decree, dated 26.07.2019, passed in M.C.O.P.No.7527 of 2016, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellant :	M/s.Amar.D.Pandiya
For Respondents :	Mr.B.Siva Kollapan
	for R2
	R1 - Served-No appearance

J U D G M E N T

The claimant has filed this appeal for enhancing the compensation awarded by the learned Special Sub Judge No.I, Motor Accident Claims Tribunal, Small Causes Court, Chennai in M.C.O.P.No.7527 of 2016.

2. The above claim petition has been filed by the claimant seeking compensation for the injuries sustained by her in a road accident that had occurred on 03.10.2016 at about 21.30 hrs, when the claimant was traveling pillion on the motor-cycle, bearing Registration No.TN-22-AU-5628 on the Rajiv Gandhi Street



Junction, Agaram then Main Road, Thiruvanchary, Chennai. At that time, a Range Rover Car bearing Registration No.TN-2 1-BZ-2121, belonging to the first respondent and insured with the second respondent was proceeding on the opposite direction. The said car was driven by its driver in a rash and negligent manner at high speed, without following the Traffic Rules and had hit the claimant's motor-cycle. As a result of which, the appellant was thrown out and sustained fracture on both leg femur, fracture on the right tibia, fracture on the right metatarsal and tarsal and multiple grievous injuries all over the body. She was immediately taken to the hospital and had to remain in hospital for sixteen days. She has claimed a compensation of Rs.50,00,000/-. The Medical Board has assessed her disability at 20%.

3. The first respondent remained ex-parte and the claim was contested by the second respondent-Insurance Company, who had taken the usual defences.

4. The Tribunal, after hearing the parties and perusing the evidence, had arrived at the following compensation:

Heads	Amount in Rs.
Disability	60,000
Pain and Sufferings	20,000
Transportation	5,000
Medical Expenses	4,84,941
Extra Nourishment	10,000
Attender Charges	4,000
Loss of Earnings	12,000
Loss of future prospectus	20,000
Total	6,15,941
Rounded Off to	6,15,950

Challenging the same, the claimant is before this Court.

5. The learned counsel appearing on behalf of the appellant/ claimant would submit that the Tribunal has erred in adopting the percentage basis for awarding compensation and that too adopting an income of Rs.3,000/-, the Tribunal ought to have adopted a notional income of Rs.4,000/-.



6. The learned counsel appearing for the second respondent-Insurance Company would contend that the amount awarded is reasonable. He would submit that the claimant has claimed amount under the head of medical expenses and since she was inpatient, the claimant is not entitled to huge sum of Rs.10,000/- under the head of Extra Nourishment, as her nourishment would have been taken care of by the hospital itself.

7. Heard the counsel for the appellant and the learned counsel appearing for the second respondent-Insurance Company and perused the records.

8. The nature of injuries and the disability assessed by the Medical Board clearly show that the appellant/ claimant had sustained injury, which has constricted her free movements. She claims to be a tailor by profession. However, there is no proof for the same. But, considering the fact that she is a lady who has to take care of her day-to-day activities at the home, not only for herself but also her family and therefore, the disability would definitely reduce her capacity to function normally. Further, the accident is of the year 2016. Therefore, the Tribunal ought to have taken of her income at Rs.4,000/-. Consequently, the amount due under the head of disability is enhanced to a sum of Rs.80,000/- (Rs.4,000 x 20%). She has been in inpatient for 16 days and would have definitely suffered considerable pain during her hospitalization and thereafter. The amount is therefore, enhanced under the head of Pain and Sufferings, to a sum of Rs.40,000/-. The transportation charges is also enhanced by a further sum of Rs.5,000/-. The attender charges awarded by the Tribunal was only a sum of Rs.4,000/-, this has to be definitely enhanced to a sum of Rs.10,000/-, since the claimant has been in the hospital for 16 days and would definitely have required the assistance of another person. The amount under the head of extra nourishment is reasonable. While in the hospital, they would have provided the extra nourishment that is required by a patient. Therefore, the amount of compensation awarded by the Tribunal is enhanced to a sum of Rs.6,94,914/- rounded off to Rs.6,94,900/-. The Award amount is therefore enhanced from a sum of Rs.6,15,950/- to a sum of Rs.6,94,900/- as follows:

Heads	Amount in Rs.
Disability	80,000
Pain and Sufferings	40,000



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Heads	Amount in Rs.
Transportation	10,000
Medical Expenses	4,84,941
Extra Nourishment	10,000
Attender Charges	10,000
Loss of Earnings	40,000
Loss of future prospectus	20,000
Total	6,94,914
Rounded Off to	6,94,900

9. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from Rs.6,15,950/- to Rs.6,94,900/-. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.7527 of 2016 along with interest at the rate of 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 six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ab/srn



To

1. The learned Special Sub Judge No.I,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai

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

+1 CC to Mr.S.Ravi Kumar, Advocate sr 18735.

C.M.A. No.4250 of 2019

BS (CO)
SP (12/05/2022)