



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.2279 of 2018

A.Barakath Nisha

...Appellant/Petitioner

Versus

1.J.Penneerselvam

2.HDFC ERGO General Insurance Co.Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet, Chennai-18.

...Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5927 of 2012 dated 26.02.2018 on the file of the Motor Accident Claims Tribunal, Special Sub-court-1, Small Causes Court, Chennai.

For Appellant	:	Mr.A.N.Viswanatha Rao
For R1	:	No such person
For R2	:	Mr.J.Michael Visuvasam

JUDGMENT

The appellant is the claimant in M.C.O.P.No.5927 of 2012. She has filed the original petition claiming compensation of Rs.8,00,000/- for the injuries she had sustained on 07.02.2012.

2. According to the claimant, on 07.02.2012 at about 10.00 a.m., when she was walking in NSC Bose Road, Anderson Street Junction, the van bearing Registration No.TN-21-AV-2431, insured with the 2nd respondent was driven by his driver in a rash and negligent manner and hit her. In the impact, the claimant sustained grievous injuries, which are morefully narrated in column-11 of the claim petition. It is also stated that the claimant took treatment as in-patient in Government General Hospital, Chennai from 07.02.2012 to 26.03.2012 for about 45 days and thereafter she was once again admitted as an in-patient and took treatment for 4 days. It is further stated



that at the time of accident, the claimant was working as a Sales Woman in Bismi File House, at Anderson Street, Chennai-1, and drawing a salary of Rs.6,000/- per month. It is her contention that due to the injuries she sustained in the accident, she was completely disabled and could not take up any employment. Therefore, the claim petition was filed by her.

3. Opposing the claim petition, the 2nd respondent/Insurance Company filed counter affidavit in which it was stated that even though the van was insured with them on the date of accident the fitness certificate to the vehicle expired. It is further stated that the van was driven by its driver carefully. However, the claimant suddenly darted across the road which was not ear-marked for pedestrian. Therefore, it is stated that the claimant is guilty of contributory negligence. The Insurance Company also denied the age, income and other particulars furnished by the claimant and prayed for dismissal of the claim petition.

4. Before the Tribunal, the claimant examined herself as P.W.1 and Dr.K.J.Mathiazhagan, as P.W.2 and Exs.P1 to P11 were marked. The respondents in the claim petition did not examine any witness or marked any document in support of their defense.

5. The Tribunal upon considering the oral and documentary evidence concluded that the accident had occurred due to the negligent driving of the driver of the van. For this purpose, the Tribunal placed reliance on Ex.P7-First Information Report as well as the charge sheet filed by the Investigation Agency.

6. As regards quantum, the Tribunal taken note of the deposition of Doctor-P.W.2, who had assessed the disability of the claimant at 60%. The Tribunal also taken into account, the various other documents filed by the claimant including the medical records to show that the claimant was admitted as in-patient in the hospital in two different spells for 53 days. Having regard to the above, the Tribunal awarded a total sum of Rs.3,48,700/- as compensation payable by the 2nd respondent/Insurance Company.

7. Not being satisfied with the amount awarded by the Tribunal, the claimant has filed this appeal for enhancement of compensation. The 2nd respondent/Insurance Company did not prefer any appeal questioning the liability fastened on them by the Tribunal.



8. The learned counsel for the appellant would contend that the claimant was admitted as in-patient for about 53 days and P.W.2-Doctor had assessed her disability at 60%. Pursuant to the accident and the injuries she had sustained, the appellant has become totally immobile and could not take up her employment as a sales woman. The Tribunal without considering the above had awarded Rs.1,80,000/- taking Rs.3,000/- per percentage of disability. According to the learned counsel for the appellant such amount awarded is measly and not proportionate to the nature of injuries sustained by the appellant and the consequential loss of earning resulted thereof. According to the learned counsel for the appellant, the Tribunal ought to have fixed the notional income of the deceased at Rs.5,000/- per month, could have awarded loss of amenities, future medical expenses and loss of marital prospects. The Tribunal failed to consider that due to disfigurement the prospects of the appellant to get married has been lost completely. The injuries sustained by the claimant in her legs is such that the claimant requires to wear a special foot wear throughout her life. The Tribunal also did not award adequate compensation under the heads pain and sufferings, transportation and extra nourishment etc and therefore the learned counsel for the appellant prayed this Court for appropriate enhancement of the compensation.

9. On the above contention, this Court heard the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on records.

10. The appellant is the claimant, who was a victim of an accident that had taken place on 07.02.2012. According to the claimant, at the time of accident she was employed in a company called Bismi File House, as a sales woman and earning Rs.6,000/- per month. However, due to the injuries she suffered she could not get back her employment and she is dependent for her livelihood on others. The learned counsel for the appellant specifically stated that the injuries sustained by the appellant are such that she is required to wear a special foot wear throughout her life. This according to the learned counsel for the appellant would stand testimony to the gravity of the injuries sustained by the appellant.

11. This Court had taken note of the submission of the learned counsel for the appellant and finds force thereof. To substantiate the nature of injuries suffered by the appellant medical records have been produced under Exs.P4, P5 to P7, P9,



P10 and P11. As per Exs.P4 and P5, the claimant was admitted as an in-patient for 53 days in Government General Hospital. Taking note of the same P.W.2/Doctor assessed her disability at 60%. Even though the Tribunal did not reduce the percentage of disability assessed by P.W.2/Doctor, the Tribunal has taken only a sum of Rs.3,000/- per percentage of disability and for 60% disability the sum of Rs.1,80,000/- was awarded.

12. Having regard to the age of the appellant at the time of accident, even though she has not filed any documentary proof, this Court can take judicial notice of the fact that as on the date of accident, the claimant-appellant could have earned Rs.6,000/- per month. It is seen from the records that the mobility of the appellant was reduced and she was required to wear a special shoe to enable her to walk. In such situation, she could not be expected to continue her regular avocation as a sales woman. Thus, the injuries suffered by the appellant had resulted in her functional disability, depriving her livelihood. Therefore, this Court is of the view that for determining compensation under the head 'disability' multiplier method could be resorted to. That apart, taking note of the age of the appellant, 40% of her monthly income of Rs.6,000/- has to be considered to award loss of future prospectus. Having regard to the above, a sum of Rs.2,400/- is taken as loss of future prospectus. By applying multiplier '16' the compensation is arrived by taking disability of the appellant at 20%. Accordingly, under the head disability, a total sum (Rs.6,000/- + Rs.2,400/- X 12 X 16 X 20/100) of Rs.3,22,560/-. Accordingly, this Court enhances the amount awarded under the head 'loss of disability' from Rs.1,80,000/- to Rs.3,22,560/-.

13. For pain and sufferings, the Tribunal awarded a sum of Rs.50,000/-. Having regard to the period of her hospitalization this amount, in the opinion of this Court is fair and reasonable.

14. For medical expenses a sum of Rs.360/- was awarded by the Tribunal based on medical bills and therefore it is hereby confirmed.

15. For extra nourishment the Tribunal awarded Rs.15,000/- which is in consonance with the period of hospitalization and the nature of injuries suffered by the claimant. Similarly, for attendant charges, the Tribunal awarded a sum of Rs.13,250/-. Having regard to the entire facts and circumstances of the case, this Court hereby confirms the compensation awarded by the Tribunal under these heads.



16. For loss of future prospects and disfigurement, the Tribunal awarded a sum of Rs.50,000/-. Due to the accident, the appellant at the age of 35 years, got her leg disfigured due to the injuries she sustained in the accident. Having regard to the above, this Court is of the view that the appellant is certainly entitled to compensation under the head of disfigurement, but the amount of Rs.50,000/- awarded by the Tribunal, in the opinion of this Court, is excessive and therefore it is hereby reduced to Rs.35,000/-.

17. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,80,000/-	3,22,560/-	Enhanced
2.	Pain and sufferings	50,000/-	50,000/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Medical expenses	360/-	360/-	Confirmed
5.	Extra nourishment	15,000/-	15,000/-	Confirmed
6.	Attendant charges	13,250/-	13,250/-	Confirmed
7.	Loss of earnings	30,000/-	30,000/-	Confirmed
8.	Loss of disfigurement	50,000/-	35,000/-	Reduced
		Rs.3,48,610/- Rounded off to Rs.3,48,700/-	Rs.4,76,170/- -	Rs.1,27,470/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,48,700/- is hereby enhanced to Rs.4,76,170/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary



Court fee, if any on the enhanced amount of compensation now determined by this Court. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court together 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 order to the credit of M.C.O.P.No.5927 of 2012, on the file of the Motor Accident Claims Tribunal, Special Sub-court-1, Small Causes Court, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Special Sub-Judge-1,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

+1 CC to Mr.A.N.Viswanatha Rao, Advocate sr 7222
+1 Cc to Mr.J.Michael Visuwasam, Advocate sr 7566

C.M.A.No.2279 of 2018

NR(CO)
SP(06/04/2022)