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C.M.A.No.1062 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1062 of 2016

Sumathi

... Appellant

..Vs..

1.Selvaraj
2.National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai 600 002.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 22.01.2016 made in MACTOP.No.1192 of 2011 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge No.1, to deal with MCOP cases, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs.R. Sreevidhya for R2

Exparte – R1

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 22.01.2016



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passed by the Motor Accident Claims Tribunal/Special Sub Judge No.1, Chennai, in MACTOP.No.1192 of 2011.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The case of the appellant is that on 25.01.2011 at 06.30 p.m., when the claimant was travelling as a passenger in a Auto Rickshaw bearing Regn.No.TN-22-BE-0894 on CTH Road, Avadi, from East to West direction, a lorry bearing Regn.No.TAL-3645 came from the opposite direction, hit against the Auto and thereby the petitioner sustained grievous and multiple injuries. Claiming that the driver of the lorry has caused the accident and the claimant has sustained grievous injuries and thus she claimed a compensation of Rs.20,00,000/- before the Motor Accidents Claims Tribunal.



4. The Tribunal, based on the oral and documentary evidences has observed that the driver of the lorry is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.3,28,050/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

5. Before the Tribunal, the Appellant/claimant has examined two witnesses as PW1 and PW2 and filed eighteen documents which were marked as Ex.P1 to Ex.P18. On the side of the second respondent/Insurance Company, one witness was examined as RW1 and two documents were marked as Ex.R1 and Ex.R2.

6. The learned counsel for the Appellant/claimant submitted that the award of the Tribunal is perverse and is liable to be set aside. It has failed to award fair and adequate compensation as provided in the M.V.Act, 1988, the various judgments of this court and the Hon'ble Apex Court. He further



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submitted that having found that the appellant herein sustained fracture of both bones of both legs and suffers a disability of 75%, the Tribunal failed to award compensation by applying multiplier method. It has erroneously awarded only Rs.2,10,000/- towards disability compensation at the rate of Rs.3000/- per percentage of disability which is not contemplated under the M.V.Act. It has failed to appreciate that the disability caused to the appellant herein would seriously affect the earning capacity and ought to have awarded adequate compensation under the head of disability and loss of earning power. It failed to award adequate compensation towards loss of earning, medical expenses, future medical expenses, pain and suffering and such other conventional heads. In any event, the award of the Tribunal is low. Hence, he prays for enhancement of the Award amount.

7. The learned counsel for the second respondent/Insurance Company has disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded just and reasonable compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.



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8. Insofar as the assessment of disability by the Tribunal is concerned, the Tribunal has fixed the disability at 70%, after considering the nature of injuries and on the basis of the disability certificate/Ex.P17 issued by the PW2/Doctor. Therefore, the Tribunal is right in fixing the permanent disability at 70%. Similarly, insofar as the assessment of disability compensation at Rs.3,000/- per percentage is concerned, the same is a correct assessment since the year of the accident is 2011 and therefore, it does not call for any interference by this Court.

9. Insofar as the compensation awarded towards loss of earning is concerned, the Tribunal has fixed the monthly income of the appellant/claimant as Rs.5000/- per month and thereby, calculated the loss of earning at Rs.5000/- x 6 months = Rs.30,000/-, which, in the considered opinion of this court, is very meagre. A perusal of Ex.12 to Ex.18 would reveal that the appellant/claimant sustained both bones of right and left legs, head injury sutures, ENT bleed and multiple injuries all over the body, Cervical spine tenderness which are grievous in nature.



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10. It is mainly contended by the learned counsel for the appellant/claimant that after the accident, the appellant/claimant had sustained disability and she could not able to do her work normal as before. Considering the nature of injuries, it could be presumed that the petitioner might not be in a position to attend her job for a period of ten months. In view of the above, this Court is of the considered opinion that compensation towards loss of earning is calculated at Rs.70,000/-(Rs.7000 x 10 months) The Tribunal has awarded compensation of a sum of Rs.10,000/- and Rs.6000/- towards extra nourishment and attender charges which in the considered opinion of this court is on the lower side. Considering the nature of injuries, the claimant might have spent some sum for extra nourishment. Hence, this Court is inclined to award a sum of Rs.15,000/- and Rs.10,000/- towards extra nourishment and attender charges respectively. Considering the objective facts such as body part affected, duration of the treatment and nature of injuries, this court fix a sum of Rs.40,000/- towards pain and sufferings.



11. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and they do not call for any interference by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.3,28,050/- to Rs.3,87,000/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount (Rs.)</i>
Loss of earning during treatment	30,000 (5000 x 6)	7000 x 10= 70,000
Expenses towards Conveyance	9,500	9500
Extra Nourishment cost	10,000	15,000
Attender charges	6,000	10,000
Disability	2,10,000	2,10,000
Medical Expenses	1,550	1550
Damages to clothes	1000	1000
Pain & Sufferings	30,000	40,000
Compensation for loss of future Amenities	30,000	30,000
Total	3,28,050/-	3,87,000/-



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13. In the result,

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(i) This appeal is partly allowed and the second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.3,87,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.1192 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

14. Since the compensation amount now awarded is Rs.3,87,000/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced amount.

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Index:Yes/No

Internet:Yes/No

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To

1. The (Motor Accidents Claims Tribunal),
Special Sub Judge No.1,
Chennai.

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



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A.A.NAKKIRAN, J.

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