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C.M.A.No.1862 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1862 of 2014

Dhanalakshmi

... Appellant

..Vs..

1.S.Ganesan

2.The United India Insurance Co. Ltd.,

No.14, Whites Road

Chennai-600 014.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the Award dated 01.04.2003 made in MACTOP No.3347 of 1999 on the file of the III Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant

: Mrs.Subadra

For M/s.M.Malar

For Respondents

: M/s.M.J.Vijayaraaghavan for R2



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JUDGMENT

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This appeal has been filed by the claimant seeking enhancement of compensation under the impugned Award dated 01.04.2003 passed by the Motor Accident Claims Tribunal/ III Judge, Small Causes Court, Chennai, in M.C.O.P No.3347 of 1999.

2. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.70,500/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income	9,000/-
Transport to hospital	1,000/-
Extra Nourishment	1,000/-
Medical Expenses	3,000/-
Pain and suffering	6,500/-
Disability at 55%	50,000/-
Total	70,500/-

3. The Appellant/claimant has sustained i) Fracture of left leg, ii) blunt injury on her head and iii) crush injury of left leg. As a result of an



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accident on 08.03.1999 caused by a vehicle owned by the first respondent and insured with the second respondent, she preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by her. The Motor Accident Claims Tribunal had directed the respondents to pay the Appellant/claimant, the aforesaid compensation.

4. Before the Tribunal, the claimant in MCOP No.1976 of 1999 and the claimant in MCOP No.3347 of 1999, the appellant herein were examined as PW1 and PW2, the Sub Inspector of Police, who investigated the case, was examined as PW3 and the doctors who treated the injured persons were examined as PW4 and PW5 and Ex.P1 to P14 were marked. On the side of the 2nd respondent, two documents were marked as Ex.R1 and Ex.R2 and no witness was examined on their side. The 1st respondent was set exparte.

5. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries



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sustained by the appellant/claimant. Though the appellant/claimant sustained Grade II compound fracture of both bones M/3 left leg due to the accident and had taken treatment at hospital as inpatient for more than 3 months, the Tribunal has failed to award adequate compensation towards disability and pain and suffering. The Tribunal has failed to appreciate the evidence of the doctor who was examined as PW4 and the disability certificate which clearly demonstrates that the appellant is suffering from disability of 55%. The Tribunal ought to have awarded compensation by adopting multiplier method as per the provisions of M.V Act and the judgment of the Apex Court. The Tribunal has failed to award any amount towards future medical expenses. Hence, he prays for enhancement of Award amount.

6. The learned counsel appearing on behalf of the 2nd respondent/Insurance Company disputed the contentions by stating that the Tribunal has assessed the compensation with reference to the documents produced by the claimant. There is no proof to establish the monthly income of the appellant/claimant. Thus, in the absence of any document to establish



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the monthly income, the Tribunal has arrived the conclusion and fixed the monthly income of the appellant/claimant as Rs.3,000/- and awarded compensation of Rs.9000/- towards loss of income during the treatment period. The compensation awarded under the other heads are just a compensation. Thus, the appeal is devoid of merits and is to be dismissed.

7. Heard the learned counsel for the Appellant/claimant and the learned counsel for the 2nd respondent/Insurance Company and also perused the materials on record.

8. A perusal of Ex.P4- Government Hospital discharge summary, Ex.P5- Puthur Hospital O.P slip and Ex.P6-Government Hospital discharge summary and Ex.P7, Kancheepuram Government Hospital O.P slips, would reveal that the Appellant/claimant had sustained grievous injuries due to the accident and had taken treatment as inpatient at hospital from 09.03.1999 to 04.06.1999, 18.07.1999 to 24.08.1999 and 06.12.1999 to 11.12.1999. The Appellant/claimant was aged 34 years and was earning Rs.100/- per day by doing tailoring work at the time of the accident. But, no proof of income



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has been filed. Hence, considering the age and avocation of the claimant, the Tribunal had rightly fixed the monthly income of the claimant as Rs.3,000/-. The grievous injuries caused disability and due to which, the appellant/claimant was incapacitated to perform her work in a routine and normal manner. As a Tailor, the Appellant/claimant would have been unable to work for a long period of time. The Tribunal has assessed the loss of income during the period of treatment at Rs.9,000/- calculated at Rs.3000/- per month for a period of three months which is very meagre. This Court is of the considered view that at least for a period of five months, the Appellant/claimant would have been unable to do her work as a Tailor. Therefore, this Court is inclined to enhance the compensation towards loss of income as Rs.15,000/- (3000 x 5) instead of Rs.9000/- (3000 x 3) during the period of treatment of the Appellant/claimant, awarded by the Tribunal. The Tribunal has not awarded any amount towards attender charges. The appellant/claimant had taken treatment as inpatient at hospital for 130 days and hence, this Court is inclined to fix Rs.50/- per day towards attender charges and accordingly, the compensation of Rs.6,500/- (130 x 50) is awarded towards attender charges.



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9. Insofar as the other heads of the compensation is concerned, the assessment of the compensation under the said heads by the Tribunal is just a assessment and it does not call for any interference by this Court.

10. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	9,000/- (3000 x 3)	15,000/- (3000 x 5)
Transportation to hospital	1,000/-	1,000/-
Extra Nourishment	1,000/-	1,000/-
Medical Expenses	3,000/-	3,000/-
Pain and suffering	6,500/-	6,500/-
Disability	50,000/-	50,000/-
Attender charges	Nil	6,500/- (130 x 50)
Total	70,500/-	83,000/-



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11. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 70,500/- to Rs.83,000/- with interest at the rate of 9% per annum from the date of claim petition and thereafter 7.5% p.a. from the date of numbering the appeal. No costs.

(ii) The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.83,000/- along with interest at the rate of 7.5% per annum from the date of numbering the Appeal and costs awarded by the Tribunal, after deducting the amount already deposited, if any, to the credit of MCOP.No.3347 of 1999 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) 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.

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Index:Yes/No

Speaking or Non-speaking Order:Yes/No

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- 1.The III Judge,
Motor Accidents Claims Tribunal
(Small Causes Court), Chennai.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.
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