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C.M.A.No.1301 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1301 of 2018

Visalakshi

... Appellant

..Vs..

1.Murugesan

(R1 was set exparte before
the Tribunal)

2.United India Insurance Co. Ltd.,

Kumar Complex, 1st Floor
No.146, West Car Street,
Tiruchengode.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 13.04.2017 made in MCOP No.122 of 2013 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Tiruchengode.

For Appellant

: Mr.N.Mohanasundaram
For M/s.C.Paraneedharan

For Respondents

: R1- Set Exparte before the Tribunal
R2- No Appearance



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JUDGMENT

WEB COPY This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 13.04.2017 passed by the Motor Accident Claims Tribunal/ Subordinate Judge, Tiruchengode, in MCOP No.122 of 2013.

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 Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,61,795/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of earning and Partial loss of earning-Rs.6000 x 3	18,000.00
Disability of 23% at Rs.3000 per percentage	69,000.00
Transport to Hospital	2,000.00
Extra Nourishment	5,000.00



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Medical Bills	67,794.50
Total	1,61,794.50 rounded off to Rs.1,61,795/-

4. On 23.12.2012, the Appellant/claimant has sustained fracture in her right thigh and also sustained injuries all over the body, as a result of an accident 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.

5. Before the Tribunal, the Appellant/claimant has filed twelve documents which were marked as Ex.P1 to Ex.P12 and examined three witnesses as PW1 to PW3. On the side of the 2nd respondent/Insurance Company, neither any document was filed nor any witness was examined before the Tribunal. The 1st respondent was set exparte.



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6. The learned counsel for the Appellant/claimant submitted that the nature of the injuries sustained by the Appellant/claimant has not been disputed by the 2nd respondent as seen from the evidence available on record. The Appellant/claimant was hospitalized for a period of 21 days at Thirukumaran Hospital, Thiruchengode as seen from the exhibit P6 discharge summary. The Appellant/claimant was a Lecturer at Sri Amman Arts College, aged 29 years at the time of the accident. The Doctor/PW2 who assessed the disability of the Appellant has fixed her disability at 52%. Subsequently, the Medical Board fixed the disability at 23% as seen from Ex.P12 Disability certificate. However, the Tribunal has assessed the permanent disability at 23%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.69,000/- calculated at Rs.3,000/- per percentage of disability. Further, the compensation awarded under the other heads viz., loss of earning power, transportation and extra nourishment is very low and also the Tribunal has failed to award any compensation towards pain and sufferings, attender charges and damage to clothing and articles. Hence, he prays for enhancement of Award amount.



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7. Insofar as the assessment of disability by the Tribunal is concerned, the Tribunal has fixed the permanent disability at 23%, after considering the nature of injuries and on the basis of the disability certificate Ex.P12 issued by the Medical Board. Therefore, the Tribunal is right in fixing the permanent disability at 23%.

8. 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 2012 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.6000/- and thereby, calculated the loss of earning at Rs.6000/- x 3 months = Rs.18,000/-, which is very meagre. On perusal of Ex.P5 would reveal that the appellant/claimant sustained fracture in clavicle bone, fracture on her right femur bone which are grievous in nature. It is mainly contended by the learned counsel for the appellant/claimant that



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after the accident, the appellant/claimant had sustained permanent disability and she could not able to do her work as normal. In view of the above, this Court is of the considered opinion that it would be appropriate to fix Rs.6500/- as monthly income and thereby, loss of earning is calculated at Rs.6500 x 3 months = Rs.19,500/-. The Tribunal has not awarded any compensation towards pain and sufferings, attender charges and damage to clothing. Hence, this Court is inclined to award a sum of Rs.10,000/- towards pain and sufferings, Rs.10,000/- towards attender charges and Rs.1,000/- towards damages to clothing.

10. 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 it does not call for any interference by this Court.

11. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,61,795/- to Rs.1,84,300/- in the following manner:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount (Rs.)</i>
Loss of earning and Partial Loss of earning	6000 x 3= 18,000.00	6500 x 3= 19,500.00
Disability of 23% at Rs.3000 per percentage	69,000.00	69,000.00
Pain and Sufferings	Nil	10,000.00
Attender charges	Nil	10,000.00
Transport to Hospital	2,000.00	2,000.00
Extra Nourishment	5,000.00	5,000.00
Medical Bills	67,794.50	67,794.50
Damages to clothing	Nil	1,000.00
Total	1,61,794.50 rounded off to Rs.1,61,795/-	1,84,294.50 rounded off to Rs.1,84,300/-

12. In the result,

(i) This appeal is partly allowed and the second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.1,84,300/- 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 MCOP No.122 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment.



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WEB COPY (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.

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Index:Yes/No

Internet:Yes/No

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To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Tiruchengode.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.
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