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C.M.A.No.1555 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1555 of 2018

K.Jayanthi

... Appellant

Vs.

1. M/s.SRM Transport India Pvt. Ltd.,
No.3, Veera Swamy Street, West Mambalam
Chennai-600 033

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

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.5715 of 2014 dated 20.03.2018, on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1-Notice Served, No Appearance
Mr.E.Rajadurai for R2



JUDGMENT

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This Civil Miscellaneous Appeal is by the claimant filed for enhancement of compensation awarded in M.C.O.P.No.5715 of 2014 dated 20.03.2018, on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Chennai.

2. The appellant is the claimant. The 1st and 2nd respondents are the owner and Insurer of the offending vehicle.

3. The case of the claimant is that on 06.07.2014 at about 4.30 hours, while she was travelling as a passenger in a bus belongs to M/s.SRM Transport India Pvt. Ltd., bearing Regn. No.TN-19-B-2253 at GST Road, Villupuam to Tindivanam direction, at Jakkampettai Village, near Iyyanar Koil, the driver of the bus, drove it in a very rash and negligent manner endangering public safety and overtook the foregoing Lorry bearing Regn. No.TN-28-B-7369 and hit the Lorry. Thereby, both the vehicles got capsized. In the above said accident, the claimant sustained grievous injuries.



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4. Since the accident had occurred due to the rash and negligent driving of the driver of the said bus, the claimant had filed a claim petition against the owner and Insurer of the said bus i.e. the respondents herein, in M.C.O.P.No.5715 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, claiming compensation of Rs.75,00,000/- stating that due to the accident, she sustained (i) Displaced comminuted fracture of posterior pillar of right acetabulum, (ii) Undisplaced fracture of right acetabulum central part extending to posterior pillar, impacted fracture of anterior interior part of femoral head (iii) Mild right hip joint hemarthrosis and (iv) Multiple injuries all over the body and thereby she is unable to do any normal and routine work.

5. Before the Tribunal, the 1st respondent/owner of the offending bus was set ex-parte.

6. In order to substantiate the case of the claimant before the Tribunal, on the side of claimant/the appellant herein and the claimant in MCOP No.5693 of 2014, common trial was conducted and totally, 4 witnesses were examined as P.W.1 and P.W.4 and also 33 documents were marked as Ex.P.1 to Ex.P.33. No oral or documentary evidence was let in, on the side of the respondents before the Tribunal.



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7. The Tribunal, after hearing the arguments on both sides and considering the oral and documentary evidence, allowed the claim petition in part and awarded a sum of Rs.5,63,800/- (including interim award passed if any) as "just compensation" with cost and interest at the rate of 7.5% per annum (no interest for future medical expenses of Rs.2,00,000/-) from the date of claim petition till the realization, payable by the 2nd respondent/Insurance Company.

8. Now challenging the award of Tribunal, the claimant has filed the present appeal for enhancement of compensation.

9. The learned counsel for the appellant/claimant submitted that the appellant was working as a P.A. to D.E.O., DPI, Chennai-600 006, and she sustained grievous injuries and 50% partial permanent disability due to the accident. Further, she also sustained fracture dislocation right hip comminuted fracture right acetabulum fracture nasal bone, whereas, the future amenities had not been considered by the Tribunal. He further submitted that during the relevant point of time, Rs.4,000/- was adopted per



percentage of disability, whereas, the Tribunal has adopted only Rs.3,000/- per percentage which warrants interference by this Court. Further, though the Doctor has issued Disability Certificate assessing the disability at 50%, the Tribunal has fixed the disability only at 45% and considering the nature of injuries and the disability sustained by the appellant, the Tribunal ought to have fixed 50% disability. Therefore, the award passed by the Tribunal does not reflect the "just compensation" and it is on the very lower side. Therefore, the appeal is filed for enhancement of compensation.

10. The learned counsel for the 2nd respondent/Insurance Company submitted that the impugned Award of the Tribunal is substantiated by the records and thus, it is the “just compensation” and it needs no interference from this Court.

11. Heard the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent/Insurance Company and perused the entire materials available on record.

12. The accident is not in dispute. The injuries alleged to have been



sustained by the claimant is also not in dispute. The Insurance coverage and liability are also not disputed. The only dispute is with regard to the quantum of compensation awarded by the Tribunal.

13. A perusal of the oral and documentary evidence including the medical records and the impugned award passed by the Tribunal, shows that already, the Tribunal has awarded a sum of Rs.2,00,000/- under the head of "future medical expenses". Therefore, this Court is of the opinion that there is no perversity in fixing the disability at 45%. However, as stated by the learned counsel for the appellant/claimant, during the relevant point of time, Rs.4,000/- was granted per percentage of disability. Therefore, instead of Rs.1,35,000/-, a sum of Rs.1,80,000/- ($\text{Rs.4,000/-} \times 45\%$) is granted towards compensation for disability.

14. Insofar as loss of earning is concerned, the appellant/claimant is stated to be a Government servant working as P.A. to D.E.O., D.P.I., Chennai. Therefore, she would have not incurred loss of income and she has also not produced any records to show as to how many days she availed leave on loss of pay due to the accidental injuries and she lost income during the leave period. Therefore, the compensation under the head of "loss of income"



does not arise at all. Hence, the Award of Rs.52,240/-, granted by the Tribunal under the head of "loss of income" is set aside.

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15. Accordingly, the award passed by the Tribunal is re-worked as follows:-

S.No.	<i>Particulars</i>	<i>Amount Awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced or set aside</i>
1	Compensation for disability	Rs.1,35,000/-	Rs.1,80,000/-	<i>Enhanced</i>
2	Pain and Sufferings	Rs.45,000/-	Rs.45,000/-	<i>Confirmed</i>
3	Loss of Income	Rs.52,240/-	Nil	<i>Set aside</i>
4	Transport to Hospital	Rs.5,000/-	Rs.5,000/-	<i>Confirmed</i>
5	Extra Nourishment	Rs.45,000/-	Rs.45,000/-	<i>Confirmed</i>
6	Medical Expenses	Rs.66,500/-	Rs.66,500/-	<i>Confirmed</i>
7	Nursing Assistant	Rs.15,000/-	Rs.15,000/-	<i>confirmed</i>
8	Future Medical Expenses	Rs.2,00,000/-	Rs.2,00,000/-	<i>Confirmed</i>
	Total	Rs.5,63,740/-	Rs.5,56,500/-	Reduced
	Total Rounded off	Rs.5,63,800/-	Rs.5,56,500/-	Reduced

16. The award of the Tribunal is modified by reducing the compensation amount from Rs.5,63,800/- to Rs.5,56,500/-.



17. The 2nd respondent/Insurance Company is directed to deposit the modified award amount of Rs.5,56,500/- to the credit of M.C.O.P.No.5715 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Small Causes Court, Chennai, with costs and interest at the rate of 7.5% per annum (no interest for future medical expenses of Rs.2,00,000/-) from the date of claim petition till the realization, as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

19. The 2nd respondent/Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.



20. In the result, this Civil Miscellaneous Appeal is dismissed with above modification in the impugned award passed by the Tribunal. Consequently Connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

31.07.2023
(2/2)

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal (Special Sub Court No.2),
Small Causes Court, Chennai

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



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P.VELMURUGAN. J.

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