



C.M.A.No.1642 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1642 of 2018

Loganayagi

... Appellant

..Vs..

1.Mohan Raj

2.The Divisional Manager
United India Insurance Company Limited
T.K.M Complex,
3rd Party Claims HUB
2nd Floor, No.81, Katpati Road
Vellore-4.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 11.11.2016 made in MCOP No.288 of 2015 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Vellore, Vellore District.

For Appellant : Mr.R.Dillikumar

For Respondents : No Appearance



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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 11.11.2016 passed by the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Vellore, Vellore District, in MCOP No.288 of 2015.

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.3,12,000/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Medical Expenses	20,000/-
Food and Extra Nourishment	10,000/-
Transportation	5,000/-
For disability (Rs.3000x50%)	1,50,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income during treatment (Rs.4,500x 6 months)	27,000/-
Pain and Suffering	50,000/-
Loss of amenities	50,000/-
Total	3,12,000/-

4. Before the Tribunal, the Appellant/claimant has filed twelve documents which were marked as Ex.P1 to Ex.P12 and examined herself as as PW1 3. On the side of the 2nd respondent/Insurance Company, neither any document was filed nor any witness examined before the Tribunal. 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 sustained by the appellant/claimant. The appellant/claimant sustained multiple fractures due to the accident and had taken treatment as inpatient for a period of ten days. She was a vegetable vendor and was earning about Rs.12,000/- per month and there is a loss of earning power. The doctor



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assessed the permanent disability at 60%. All these aspects have not been considered by the Tribunal. Contrary, the Tribunal has reduced the disability at 50%. Hence, he prays to enhance the award.

6. It is contended by the appellant/claimant that at the time of accident, she was aged about 48 years and the grievous injuries caused disability and the appellant/claimant was incapacitated to perform her avocation of work in a routine and normal manner.

7. The accident occurred on 28.03.2015 at about 03.15 a.m at Bagayam to Vellore Road, opposite to Bharath State Bank. The Vellore South police station registered a case in Crime No.190 of 2015 under Sections 279 and 338 IPC. The appellant/claimant sustained grievous injuries viz., i) fracture of left leg both bone, ii) fracture on body of talus (ankle joint), iii), ankle joint haemarthrosis, iv) periarticular soft tissue contusion and also injuries all over her body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The negligence was attributed against the 1st



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respondent's car driver. The findings of the Tribunal is that the car driver had driven the vehicle in a rash and negligent manner which resulted in an accident.

8. Insofar as the assessment of disability by the Tribunal is concerned, eventhough the doctor has assessed the disability at 60%, the Tribunal has reduced the same to 50%, considering the nature of injuries. Hence, the disability fixed by the Tribunal is a correct assessment.

9. A perusal of Ex.P3 - copy of Accident Register would reveal that initially, the appellant had taken treatment at Government Hospital, Vellore for about ten days. Thereafter, she had taken treatment at CMC, Vellore in two spells, where she had undergone surgery for left distal osteotomy and bone grafting, as seen from Ex.P5 and Ex.P6 discharge summary. The appellant/claimant is a vegetable vendor. But, the Tribunal had fixed the monthly income of the appellant/claimant only as Rs.4,500/- which is very meagre and hence, it deserves to be enhanced. Therefore, it would be appropriate to fix Rs.7,000/- as monthly income. Further, the compensation



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awarded by the Tribunal towards transportation is inadequate and the same has to be enhanced to Rs.10,000/-. Further, the Tribunal has failed to award any compensation towards damages to cloths and cell phone. Hence, it would be appropriate to award Rs.5,000/- on the said head.

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 modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Medical expenses	20,000/-	20,000/-
Food and extra nourishment	10,000/-	10,000/-
Transportation	5,000/-	10,000/-
For Disability (Rs.3000 x 50%)	1,50,000/-	1,50,000/-
Loss of income during treatment	27,000/- (Rs.4,500 x 6)	42,000/- (Rs.7000 x 6)



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Pain and Suffering	50,000/-	50,000/-
Loss of amenities	50,000/-	50,000/-
Damages to cloths and cell phone	Nil	5,000/-
Total	3,12,000/-	3,37,000/-

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 3,12,000/- to Rs.3,37,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.3,37,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.288 of 2015 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



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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 Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal),
Vellore.
2. The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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