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CMA.No.1774 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1774 of 2018

S.Mohana

... Appellant

..Vs..

1. V.Manigandan
2. The New India Assurance Company Limited,
No.45, Moore street,
Chennai.
Also at
East Cost Chambers,
No.92, GNT Road
T.Nagar, Chennai – 600 017.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2017 made in MCOP.No.3116 of 2011 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes, Chennai)

For Appellant : Mrs.A.Subadra
for M/s.M.Malar

For Respondents : Mr.J. Chandran for R2
Ex parte – R1

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 30.10.2017



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passed by the VI Court of Small Causes, Chennai / Motor Accident Claims

WEB CO Tribunal, in MCOP.No.3116 of 2011.

2. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain & Sufferings	20,000/-
Transport & Extra Nourishment	10,000/-
Disability (5 x 3000)	15,000/-
Loss of income(2 x 9735)	19,470/-
Attender charges	1000/-
Medical bills	8360/-
Total	73,830/-

Rounded off to Rs.74,000/-

4. The learned counsel appearing for the appellant has submitted that



the Judgment of the lower court is contrary to law and weight of evidence.

She further submitted that the Tribunal has decreed the case without any valid evidence on the part of the respondents. It has failed to consider the grievous injuries sustained by the injured. It failed to consider that the injured has taken treatment both at Government Hospital as well as at Private Hospital as inpatient and out patient. The Doctor has assessed the disability as 35% whereas the Tribunal fixed only 5% as disability. It ought to apply multiplier method to assess the loss of earning capacity since she has lost her earning capacity to some extent. It ought to award separate heads for transport and extra nourishment. It ought to award compensation under the head of loss of amenities, mental agony, disfigurement and damages. It ought to award more compensation under the head of pain and sufferings and attender charges. Hence, she prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ Insurance Company has submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.



WEB COPY 6. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.

7. Since the appellant was aged about 40 years at the time of accident as per Ex.P1/copy of FIR and she was a sanitary worker in the Corporation of Chennai earning Rs.9,735/- per month which was proven by Ex.P3/salary slip, the assessment of the Tribunal at Rs.19,470/-(2 x 9735) for two months towards loss of income during healing period, seems to be on the lower side. Hence, considering the year of accident, nature of grievous injuries and the age of the appellant and that she would have taken treatment for atleast four months, this Court is inclined to take four months as healing period and accordingly fix a sum of Rs.38,940/- (4 x 9735) under the said head.

8. P.W.1 deposition shows that she sustained grievous injuries in the accident and immediately she was taken to the Government Hospital, wherein she was treated as in-patient. A perusal of Ex.P2/discharge



summary would show that the appellant sustained fracture on her left tibia at lower 3rd shaft. She took conservative and physiotherapy treatments. She further deposed that she was working as Sanitary worker and was earning Rs.9735/- per month at the time of accident and after the accident, she has taken medical leave for four months. She is not able to do her work as before. Upon perusing Ex.P11/Disability certificate and Ex.P12/X-ray, PW2/Doctor has assessed the disability of the appellant at 35% and issued Ex.P11/disability certificate. Considering the age of the appellant/claimant and nature of injuries, this court is inclined to fix 30% towards disability and thus arrived at Rs.90,000/-(3000 x 30%). From the records, it is seen that she has taken continuous treatment in private hospital even after discharge from the Government Hospital. This Court is of the considered view that due to the nature of grievous injuries sustained by the appellant and the period of treatment as in-patient and outpatient, she might have incurred transport expenses and she might have taken nutritious food and hence this court is inclined to grant a sum of Rs.15,000/- towards Transport and Extra Nourishment.

9. A Perusal of Ex.P2/Discharge summary shows that the claimant has taken treatment as in-patient in Government Hospital. After the



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accident, she could not do her day to day need by herself without the help of attender during the treatment period. From the records, it is seen that she took conservative and physiotherapy treatment and there is a malunion and fracture occurred on her lower third of the left Tibia shaft. But the Tribunal has awarded a meagre sum of Rs.20,000/- towards Pain and sufferings and hence the same needs revisit. Hence, a sum of Rs.30,000/- is fixed by this court towards Pain and sufferings.

10. Insofar as the other heads such as attender charges and medical expenses are concerned, the assessment of the compensation awarded by the Tribunal is just and reasonable compensation and they do not call for any interference by this Court.

11. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pain & sufferings	20000/-	30,000/-
Transport & Extra Nourishment	10,000/-	15,000 /-
Disability	15,000/-	90,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of income	19,470/-	38,940/-
Attender charges	1000/-	1000/-
Medical bills	8,360/-	8,360/-
Total	73,830/-	1,83,300/-

Rounded off to Rs.1,84,000/-

12. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.74,000/- to Rs.1,84,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the above stated modified award amount together with interest from the date of filing of the petition till the date of deposit and costs as assessed by the Tribunal, to the credit of MCOP.No.3116 of 2011, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.



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A.A.NAKKIRAN, J

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(c) 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.

19.06.2023

Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
VI Court of Small Causes, Chennai.

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

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