



C.M.A.No.3733 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3733 of 2019

V.Samundeswari

... Appellant

..Vs..

1.S.Govindsamy

2.The Oriental Insurance Co. Ltd.,
No.69, West Madha Church Road
Appavoo Towers, 1st Floor
Royapuram, Chennai-600 013.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 13.11.2018 made in MCOP No.6957 of 2013 on the file of the VI Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant

: Mr. K.Varada Kamaraj

For Respondents

: M/s.R.Sreevidya for R2
No Appearance for R1



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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 13.11.2018 passed by the Motor Accident Claims Tribunal/ VI Judge, Small Causes Court, Chennai, in M.C.O.P No.6957 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.1,00,415/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability	45,000/-
Pain and Suffering	20,000/-
Extra Nourishment	5,000/-
Transport to Hospital	5,000/-
Damages to Cloths	1,000/-
Attender charges	600/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Medical Expenses	1,815/-
Loss of Income : 6000 x 2	12,000/-
Loss of amenities	10,000/-
Total	1,00,415/- rounded off to 1,00,400/-

4. The Appellant/claimant has sustained i) laceration left parietal region 4x2x1.5 cms, ii) abrasion multiple on left side face, at cheek 2x2 cms, iii) contusion right foot, iv) wound debridement and suturing with stapplers on head parietal region and fracture on 2nd and 3rd Metatarsal bones right foot besides other injuries all over her body. As a result of an accident on 24.09.2013 caused by a vehicle owned by the first respondent and insured with the second respondent, he 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 eleven documents which were marked as Ex.P1 to Ex.P11 and examined herself as PW1 and the doctor who examined the claimant, as PW2 on her side. On the side of the 2nd respondent, neither any document was filed nor any witness was examined before the Tribunal. The 1st respondent was set *exparte*.

6. 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 grievous injuries and fractures due to the accident and had taken treatment as inpatient. She was a coolie and was earning about Rs.350/- per day and there is a loss of earning power. The doctor assessed the disability at 20%, however, the Tribunal has reduced the same to 15%. Further, the compensation awarded under the other heads viz., pain and suffering, loss of income, medical expenses, transportation, attender charges, extra nourishment and loss of amenities is very low and also the Tribunal has



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failed to award any compensation towards future prospects income of the appellant. Hence, he prays for enhancement of Award amount.

7. 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 the monthly income, the Tribunal has arrived the conclusion and fixed the monthly income of the appellant/claimant as Rs.6,000/- and awarded compensation. The compensation awarded under the other heads are just a compensation. Thus, the appeal is devoid of merits and is to be dismissed.

8. 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.



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9. Insofar as the assessment of disability by the Tribunal is concerned, eventhough the Doctor assessed the disability at 20%, the Tribunal has reduced the disability at 15%, after considering the age and the nature of injuries sustained by the petitioner. Hence, the disability fixed by the Tribunal is a correct assessment.

10. 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 2013 and therefore, it does not call for any interference by this Court.

11. A perusal of Ex.P2- A.R copy, wound certificate and Ex.P4- discharge summary would reveal that the Appellant/claimant had sustained injuries due to the accident and had taken treatment as inpatient at Rajiv Government General Hospital on 24.09.2013 and 25.09.2013. The Appellant/claimant was a coolie, aged 37 years at the time of the accident. But, the Tribunal had fixed the monthly income of the appellant/claimant only as Rs.6,000/- which is on the lesser side. The grievous injuries caused



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disability and due to which, the appellant/claimant was incapacitated to perform her work in a routine and normal manner. As a coolie, 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.12,000/- calculated at Rs.6000/- per month for a period of two 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 coolie. Therefore, this Court is inclined to fix monthly income as Rs.6,500/- and accordingly, the compensation towards loss of income during the period of treatment of the Appellant/claimant is enhanced to Rs.32,500/- instead of Rs.12,000/- awarded by the Tribunal. The Tribunal has awarded Rs.600/- towards attender charges which is very low in the considered view of this Court and accordingly, the compensation towards attender charges is enhanced to Rs.5,000/- instead of Rs.600/-.

12. 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.



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13. 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>
Disability	45,000/-	45,000/-
Pain and suffering	20,000/-	20,000/-
Extra Nourishment	5,000/-	5,000/-
Transport to Hospital	5,000/-	5,000/-
Damages to clothes	1,000/-	1,000/-
Attender charges	600/-	5,000/-
Medical expenses	1,815/-	1,815/-
Loss of Income	6000x 2 12,000/-	6500 x 5 months 32,500/-
Loss of amenities	10,000/-	10,000/-
Total	1,00,415/- rounded off to 1,00,400/-	1,25,315/- rounded off to 1,25,300/-

14. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 1,00,400/- to Rs.1,25,300/- 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



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deposit the modified amount i.e, Rs.1,25,300/- 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.6957 of 2013 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.

(iv) The appellant/claimant is directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs.

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Index:Yes/No

Speaking or Non-speaking Order:Yes/No
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A.A.NAKKIRAN, J.
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To

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

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