IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2890 of 2022

Muthuvalli … Appellant

Vs.

1.G.Murugan
2.ICICI Lombard General Insurance Co. Ltd.,
Chotta Bai Centre,
Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034. ... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2019 in MCOP.No.4959 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court-I, Small Causes Court, Chennai.

For Appellant : Mr.K.Malaikannu

For Respondents : Mr.B.Sivakollappan for R2
Notice dispensed with for R1

JUDGMENT

The claimant has preferred the instant appeal seeking enhancement of compensation awarded by the Tribunal.

2. The appellant had filed a claim petition stating that on 19.12.2011, while she was travelling as a pillion rider; the rider of the two wheeler drove the same in a rash and negligent manner and dashed against the lorry, as a result of which the appellant sustained grevious injuries.

3. The first respondent, the owner of the offending vehicle remained *ex-parte* before the Tribunal.

4. The second respondent/Insurance Company resisted the claim petition stating that the accident did not take place due to the rash and negligence of the driver of the vehicle insured with the second respondent/Insurance Company; and that in any case, the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined three witnesses as PW.2 to P.W.4 and marked seventeen documents as Exs.P22 to P39. The

claim petition was tried along with the another claim petition and hence the remaining witnesses and exhibits were marked in the other claim petition. On the side of the second respondent/Insurance Company neither oral nor documentary evidence was adduced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence held that the accident took place only due to the rash and negligent act of the driver of the offending vehicle and directed the second respondent/Insurance Company being the insurer of the offending vehicle to pay a sum of Rs.14,16,450/- as compensation to the appellant. Aggrieved over the said award, the appellant/ claimant has preferred the instant appeal.

7. The learned counsel for the appellant submitted that though the appellant had established the fact that she was vegetable vendor, the Tribunal had taken a meagre notional income of Rs.6,000/- and had not added future prospects. The learned counsel further submitted that the Tribunal had erroneously declined the claim for future medical expenses, although the appellant had taken treatment for nearly forty six days and that the award of compensation under other heads are also meagre and hence, prayed for enhancement of compensation awarded by the Tribunal.

8. Learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the first respondent is dispensed with.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the appellant had neither established her avocation nor her income and therefore, the Tribunal had rightly fixed the notional income and that the compensation awarded by the Tribunal is just and reasonable that therefore, it does not call for any interference and hence, prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

11. On perusal of records, it is seen that the appellant examined herself as P.W.2 and had deposed that she was working as a vegetable

vendor. However, no documents has been filed to prove her avocation or income. Considering the fact that the appellant was working as a vegetable vendor; her age and the year of the accident, this Court is of the view that the notional income can be fixed as Rs.7,500/-. The Tribunal had adopted multiplier method for computing the compensation under the head "Loss of dependency". There is no challenge to the adoption of multiplier method by the Tribunal. The Tribunal had fixed the functional disability at 70%. The appellant was aged about 43 years at the time of the accident. The appellant is entitled for future prospects in the facts of this case which would be at 25%. Thus the compensation under the head "Pecuniary loss" has to be Rs.7,500/- + Rs.1,875/- (25% future prospects) = Rs.9,375/- x 12 x 14 x 70/100 = Rs.11,02,500/- .

12. The appellant sustained the following injuries:-

1. *sustained Poly trauma – right elbow,*
2. *abrasions right lumbar region, right thigh,*
3. *CT abdomen showed liver laceration*
4. *Fracture L3, L4 and L5 tranverse processes*

The said injuries were certified by a Doctor to be grievous in nature. She had undergone treatment as an inpatient in three spells and underwent six surgeries. Therefore, under these circumstances, it would be just and reasonable to fix Rs.75,000/- under the head “Pain and suffering”. In view of the treatment as an inpatient, this Court is of the view that the computation under the head “Attendant Charges” can be enhanced to a sum of Rs.50,000/-. It is also seen that the Tribunal had not awarded any compensation under the head “Future Medical Expenses”. Though the appellant had marked Ex.P38, the certificate given by the doctor for the future medical expenses, no details have been furnished in this said claim petition. However, considering the nature of injuries, it cannot be stated that the appellant would not incur any expenses for medical treatment in future. Considering the facts, this Court is of the view that it would be just and reasonable to award a sum of Rs.50,000/- under the said head. The award of the Tribunal under the other heads is just and reasonable and the same is hereby confirmed.

13. Thus the award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pecuniary	7,05,600	11,02,500	Enhanced

	loss			
2.	Pain and suffering	40,000	75,000	Enhanced
3	Transportation	5,000	5,000	Confirmed
4.	Medical Expenses	5,84,332	5,84,332	Confirmed
5.	Extra Nourishment	20,000	20,000	Confirmed
6.	Attender Charges	11,500	50,000	Enhanced
7	Loss of future prospects	50000	---	Set aside
8	Future Medical Expenses	---	50,000	Granted
	Total	Rs.14,16,432/- rounded off to Rs.14,16,450/-	Rs. 18,86,832 /- rounded off to Rs.18,86,850/-	Enhanced by Rs.4,70,400/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,16,450/- is hereby enhanced to Rs.18,86,850/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined by this

Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

15.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
gba

To

1.The Special Sub Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.

SUNDER MOHAN,J.

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