IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.4625 of 2019

A. Sarala .. Appellant

Vs.

1.K.Sakthivel

2.United India Insurance Co.LTd.,
Silingi Building,
New No.134, Old No.40-45,
Greams Road,
Chennai - 600006. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 19.11.2018 made in M.C.O.P.No.965 of 2013 on the file of the Motor Accidents Claims Tribunal/Court V of Small Causes, Chennai.

For Appellant : Mr.Miru Aurobindo Cumar
for M/s.Ramya V. Rao

For Respondents : No appearance for R1
Mr.M.J.Vijayaraaghavan for R2

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 19.11.2018 passed by the Motor Accident Claims Tribunal/Court V of Small Causes, Chennai, in M.C.O.P.No.965 of 2013.

2. The case of the claimant / appellant is that on 11.09.2011 at about 18.00 hrs, while the appellant along with another were travelling as passengers in an auto rickshaw bearing Regn.No.TN-10-X-8455, near Sirukalathur Card Box Company, on the Kunrathur-Somamangalam Salai, from East to West direction, hit on the motorcyle bearing Reg.No.TN-09-AV-9047 which came from the opposite direction driven by the driver of the first respondent in a rash and negligent manner, due to which, the appellant along with another sustained grievous injuries. Claiming that the appellant was Tailor and earning about Rs.10,000/- per month and the driver of the auto rickshaw is solely responsible for the accident, the appellants / claimants have filed a claim petition claiming a sum of Rs.12,00,000/- and Rs.6,00,000/- respectively.

3. The Tribunal, based on the evidence of P.W.1 and perusing the exhibits in Ex.P1 to P8, has fastened the liability on the first respondent, which has to be indemnified by the second respondent / Insurer and ultimately quantified the total compensation at Rs.1,72,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant submitted that the appellant was a Tailor and was earning Rs.10,000/- per month. The doctor assessed the disability of the appellant as 40% whereas the Tribunal fixed 30% for disability and awarded only a sum of Rs.3000/- per percentage. He further submitted that PW3 deposed that the injured has sustained "Fracture of right femur medial condyle and fracture of distal radius of Ulna". He further submitted that the Tribunal has failed to fix the notional income at Rs.10,000/-. It has failed to follow the various Apex Court rulings as guidance before fixing the compensation. The award granted by the Tribunal is grossly low, unjust and arbitrary and deserves to be enhanced. He further submitted that the Tribunal ought to award more compensation under the heads of disability and loss of amenities; the PW3/Doctor assessed the disability as 40% as seen from Ex.P16/disability certificate. But the Tribunal arrived 30% as partial permanent disability based on Ex.P14 to Ex.P16. On the date of accident, the auto rickshaw was having permit but not fitness certificate; and in any event, the Tribunal erred in awarding compensation at Rs.1,72,000/- as against the claim of Rs.12,00,000/-. Hence, he prays for enhancement of Award amount.

5. Before the Tribunal, the Appellant/claimant has examined three witnesses and marked PW1 to PW3 and filed nineteen documents which were marked as Ex.P1 to Ex.P19. On the side of the second respondent/Insurance Company, two witnesses were examined as RW1 and RW2 and filed four documents which were marked as Ex.R1 to Ex.R4.

6. Per contra, the learned counsel for the second respondent / Insurance Company submitted that the appellant has to prove her age, occupation, income and the nature of injuries sustained by her. He further submits that the accident occurred due to the rash and negligent act of the rider of the motorcycle and hence the owner and Insurance Company of the motor cycle has to be impleaded as necessary parties. He further submitted that the appellant has to prove that the auto has been insured with the 2nd respondent and having a valid vehicular records on the date of accident. Hence, the 2nd respondent is not liable to pay any compensation to the appellant. The compensation claimed in any event, is highly speculative, excessive, inflated and baseless. The Tribunal has taken into consideration each and every aspect and has awarded just compensation, which does not require any interference at the hands of this Court. Hence, he prays for dismissal of the appeal.

7. 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. No representation for the first respondent.

8. Based on the evidences of P.W.1 and P.W.2 and perusing the exhibits in Ex.P1, the Tribunal has fastened the liability on the Driver of the auto rickshaw, which has to be compensated by the Insurer / second respondent herein.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that she was a Tailor and was earning Rs.10000/- per month. Though the disability was assessed as 40%, considering the nature of injuries sustained by the appellant and based on cross-examination of PW3/Doctor and Ex.P14 to Ex.P16, the Tribunal reduces the percentage as 30% and awarded Rs.90,000/- (Rs.3000x30%) towards disability. However, considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the disability of the Appellant/claimant at 35%. Hence, under the head of disability, the amount

to be awarded to the appellant/claimant would be Rs.1,05,000/- (Rs.3000x35%). Insofar as the assessment of disability compensation at Rs.3000/- per percentage is concerned, the same is a correct assessment. However, in view of the modification of the disability from 30% to 35% by this Court, the disability compensation is enhanced to Rs.1,05,000/- by this Court instead of Rs.90,000/- assessed by the Tribunal.

10. With regard to quantum, the Tribunal has awarded a sum of Rs.21,000/- towards loss of income, taking the monthly income of the deceased at Rs.7,000/-. In the claim petition, the income of the appellant has been stated as Rs.10,000/- per month, as Tailor. But the appellant has not produced any document to prove her earnings. Considering the socio-economic conditions prevailing in the year 2011, the Tribunal has fixed the income of the appellant as Rs.7000/- per month. This Court is of the considered view that due to the injuries sustained by the appellant and treatment given in the hospital, she has lost her earning capacity and thus fixed four months for calculation of loss of income and thus award Rs.28,000/- (4 x 7000=Rs.28000) towards loss of income. The Tribunal has rightly adopted the percentage method instead of multiplier method.

Accordingly, the amount awarded towards loss of income stands modified from Rs.21,000/ - to Rs.28,000/-. Further, on perusal of records, it is seen that the Tribunal has granted compensation of Rs.10,000/- towards loss of amenities, which is low, in the considered view of this Court. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellant towards loss of amenities.

11. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the other heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

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

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Medical Expenses	685/-	685/-
Loss of Income (7000 x4)	21000/-	28000/-
Pain & Sufferings	30000	30,000/-
Transport & Extra Nourishment	20,000/-	20,000/-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Disability	90000/-	1,05,000/-
Loss of amenities	10,000/-	15,000/-
Total	**1,71,685/-**	**1,98,685/-**

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **allowed,** by enhancing the total amount of compensation from Rs.1,71,685/- to Rs.1,98,685/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit. It is made clear that no interest is granted for the default period of 154 days.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.C.O.P.No.965 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent, who is the owner of the vehicle, in accordance with law. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

30.01.2023

Index : Yes/No
Internet : Yes/No
gv

To

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

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

A.A.NAKKIRAN, J

gv

C.M.A.No.4625 of 2019

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