



C.M.A.No.657 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.657 of 2022

Chandra

... Appellant

Versus

1.The Managing Partner,
Aghin Roadways, MMC 4/2155/2,
Mundok Road Mahe,
Mahe UT.Dist,
Pondicherry, UT-673 310.

2.The General Manager,
Reliance General Insurance,
No.19, Reliance Centre,
Walchand Hirachand Marg,
Ballard Estate, Mumbai – 400 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 14.09.2021 passed in M.C.O.P.No.649 of 2015, on the file of the Motor Accident Claims Tribunal, Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.S.P.Yuvaraj

For R2 : Mr.P.Suresh Srinivasan



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JUDGMENT

WEB COPY This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.649 of 2015, dated 14.09.2021.

2.The claim petition was filed stating that on 01.05.2015 at about 11.30 a.m., while the appellant was travelling in TATA ACE vehicle bearing Regn No.TN 46 P 5054 at Thittakudi to Ramanatham Road, the Tarras Lorry bearing Regn No. PY 03 9533, driven by its driver in a rash and negligent manner, dashed against the TATA ACE; that due to the said accident, the appellant sustained grievous injuries and thus, the appellant was entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the appellant travelled as gratuitous passenger in the goods vehicle; that due to overload, the driver of the TATA ACE lost balance and dashed against



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the lorry and hence, the 2nd respondent was not liable to pay any compensation to the appellant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined herself as P.W.1 and P.W.2-Doctor and marked Ex.P.1 to Ex.P.21 on his side. The 2nd respondent had not examined any witness or marked any document. The disability certificate of the appellant was marked as Ex.X1.

6.The Tribunal after considering the oral and documentary evidence, directed the 2nd respondent to pay a sum of Rs.8,33,805/- as compensation to the appellant.

7.Aggrieved over the award passed by the Tribunal, the appellant filed the present appeal seeking enhancement of compensation.

8.The learned counsel for the appellant submitted that though there was overwhelming medical evidence to show that the appellant suffered 100% functional disability, the Tribunal awarded compensation by adopting percentage method. The learned counsel relied upon Ex.P5 to



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P7-discharge summaries to prove the nature of injuries suffered by the appellant and the treatment taken by her. The learned counsel also relied upon Ex.X1-disability certificate issued by the Medical Board to show that the appellant was certified as Nuerologically handicaped. Therefore, the learned counsel submitted that the appellant had suffered 100% functional disability; that she was running beauty parlor and earning more than Rs.20,000/- per month prior to the accident; and that the award of the compensation under other heads is also meagre and prayed for enhancement.

9.The learned counsel for the 2nd respondent per contra submitted that the Tribunal had accepted Ex.X1-disability certificate issued by the Medical Board and had rightly awarded compensation by adopting percentage method and there is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

10.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?



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11. On perusal of the records, it is seen that the appellant had marked discharge summaries issued by the hospital which had treated her. From Ex.P5-discharge summary issued on 03.06.2015, it is seen that the following treatment was given to the appellant:-

“Patient admitted with very low GCS and severe head injury. Patient intubated and on ventilatory support. Tracheostomy done on 02.05.2015. MRI is S/o severe diffuse axonal injury and brain stem injury. Patient is clinically showing features of midbrain injury right 3rd nuclear palsy / impaired dolls eye movement / left hemiparesis with severe rigidity and also features of automatic instability. Patient weaned from ventilator. GCS E4 VT M5 (on metal tube). Patient is off ventilator past 10 days. She is showing signs of automatic instability on and off in the form of tachycardia / tachypnoea and rigidly. Clinically her GCS has improved. Need for prolonged nursing care / physiotherapy and tracheostomy care explained. Possibility of delayed recovery / persistent vegetative state also explained. Patient is discharged with advise for tracheostomy care, home nursing care and physiocare. Patient needs further evaluation after 2 weeks for planning tracheostomy closure.”



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12. That apart, the Medical Board had certified that the appellant is neurologically handicapped and assessed the disability as 54%. As per the discharge summary, the appellant suffered RTA with Grade III diffuse axonal injury / Brain stem contusion, base of skull fracture extending across sphenoid bone, right fronto parietal subcortical contusion, diffuse cerebral edema and paid syndrome. In the said discharge summary which is extracted above, it is stated that there is possibility of delayed recovery / persistent vegetative state for the appellant.

13. Considering the above facts, this Court is of the view that the percentage of disability assessed by the Medical Board has to be fixed as percentage of functional disability. Therefore, in the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to award compensation by adopting multiplier method. Though it is claimed that the appellant was running a beauty parlour and earning more than Rs.20,000/- per month, no documentary proof was produced to establish the same. However, considering the age, avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the appellant at Rs.12,000/- per month. The appellant will also be entitled to 40% towards future



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prospect. It is seen from Ex.P19 that the appellant was aged 35 years at the time of accident and hence the multiplier applicable is 16. Thus, the award of compensation under the head permanent disability has to be as follows:

$$\text{Rs.16,800/- (Rs.12,000/- + 40\%) X 12 X 16 X 54/100 =}$$
$$\text{Rs.17,41,824/-}$$

14.The amount awarded by the Tribunal towards pain and suffering is meagre and the same is enhanced to Rs.50,000/-. The appellant was treated as in-patient for 34 days and hence, the award under the head attender charges is enhanced to Rs.25,000/-. The Tribunal had not awarded any amount under the head loss of amenities and hence a sum of Rs.25,000/- is awarded towards loss of amenities. The amount awarded under other heads is just and reasonable and the same are confirmed. Further, the learned counsel for the appellant had not pointed out any error in the finding of the Tribunal with regard to fixing of 10% contributory negligence on the part of the appellant. Hence, the said finding is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,62,000	17,41,824	Enhanced
2.	Pain and Suffering	20,000	50,000	Enhanced
3.	Attender Charges	15,000	25,000	Enhanced
4.	Extra Nourishment	15,000	15,000	Confirmed
5.	Transportation	25,000	25,000	Confirmed
6.	Medical Expenses	6,65,450	6,65,450	Confirmed
7.	Loss of Income	24,000	24,000	Confirmed
8.	Loss of Amenities	-	25,000	Granted
	Total	9,26,450	25,71,274	Enhanced by Rs.14,80,342/-
	After deducting 10% towards contributory negligence	8,33,805	23,14,147	

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,33,805/- is hereby enhanced to Rs.23,14,147/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along



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with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

30.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Vehicle Accident Tribunal,
Sessions Judge, Mahila Court, Perambalur.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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