



CMA.No.508 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A.No.508 of 2017

K.Sasirekha

... Appellant

vs.

1. K.Rajendran
2. S.Siva
3. Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam.
Chennai-600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 12.08.2014 made in MCOP.No.805 of 2010, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court dealing with MCOP Cases) Chennai.

For appellant : Mr.C.Munusamy

For respondents : R1 and R2 Exparte

: Mr.G.Vasudevan for R3



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JUDGMENT

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Challenge is made by the claimant against the judgment and decree passed in M.C.O.P.No.805 of 2010 dated 12.08.2014 on the file of the Motor Accident Claims Tribunal Special Sub Court-I, Chennai for enhancement of compensation.

2. Claim petition was filed under Section 166 of Motor Vehicles Act, 1988 and Rule 3 of MACT Rules claiming compensation of Rs.10,00,000/- for the injuries sustained by the claimant Sasirekha in a road accident that took place on 02.02.2010.

3. The learned Tribunal after hearing both sides arguments and upon considering the oral and documentary evidence has passed an award for a sum of Rs.6,23,340/- with interest at 7.5% per annum from the date of numbering of petition i.e., 11.03.2010 (excluding the default period if any).

4. The learned counsel for the appellant would vehemently argue that the injured who was aged about 25 years at the relevant point of time on account of the accident, suffered sacrum fracture S1, S2 and S3



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bilateral superior and interior pubic rami fracture: The Doctor has assessed the disability as 50%. But, the tribunal has taken only 20% which is on the lower side. No amount was granted for transport expenses. A amount granted for Pain and Suffering is less and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the Insurance Company would strenuously contend that PW2 Dr.K.Mathiyazhan has assessed the disability as 50% which is on the higher side and the tribunal has taken for the whole body 20% and granted compensation, which is a well reasoned order and it needs no interference.

6. It can be seen from the evidence of P.W.1 that while she was travelling as a pillion rider along with her two daughters and the vehicle was ridden by her friend, a Tipper lorry came in a rash and negligent manner and hit the two wheeler. Due to the said accident she sustained fractures. It is seen from Ex.P.2 Discharge Summary that the claimant suffered sacrum fracture S1, S2 and S3 bilateral superior and interior pubic rami fracture. She undergone surgery for the pelvis fracture, external

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fixation was done and anterior vaginal wall repair was done. Skin grafting was also done for her. She was in hospital from 05.02.2010 to 11.03.2010 as an inpatient. She was stated to be working as a Tailor and earning a sum of Rs.6,000/- per month. Sacrum is a large, triangular bone at the base of the spine. She had fracture of pelvic as well as sacrum bone.

7. From the medical records, it could be seen that the appellant suffered fracture in Pelvic Bone. For fracture of thigh bone, external fixator was fixed. It is the evidence of P.W.1 that because of the effects of fracture, she was not in a position to work as she did before she claims that she finds difficult even to stand. As she had laceration in the interior vagina wall, repairing was done. It is the evidence from Dr.P.W.2

Dr.Mathiyazhan that " இரண்டு இருப்புகளிலும் எலும்பு முறிவு ஏற்பட்டது. மேலும் இரண்டு தொடைகளிலும் சதை கிழிந்து பலத்த காயம் ஏற்பட்டது. குளோபல் மருத்துவமனையில் 19 நாட்கள் உள்நோயாளியாக சிகிச்சை பெற்றார். அங்கு அவருக்கு இரண்டு இருப்புகளில் ஏற்பட்ட எலும்பு முறிவுக்கு வெளிப்புறத்தில் பரிசோதனையில் இருப்பு பகுதிகளில் வலியும் இறுக்கமும் ஏற்படுகிறது. அசைவுகள் பாதிக்கப்பட்டுள்ளது. அவர் தற்போது குனிந்து நிமிரவும், தலையில் அமரவும், கடினமான பொருட்களை தூக்கவும்



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சீரமப்படுகிறார். அவரால் இருப்பு பகுதியை 40 டிகிரிக்கு மேல் அசைக்க முடியவில்லை. ஊடுகதிர் படத்தில் எலும்புகள் மாறாக கூடியுள்ளது தெரிகிறது. தொடை பகுதிகளில் காயம் ஏற்பட்ட இடம் விகாரத் தன்மையுடன் காணப்படுகிறது.

8. The Doctor has assessed the disability as 50% and the Tribunal has taken disability for the whole body as 20%. If a person suffers a fracture over the hip, sacrum as well as thigh bone at the same time, then it would have been very difficult for her even to attend her normal work. In ***Raj Kumar Vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC)***, the Supreme Court has cautioned the tribunal while assessing disability, the Court has to look into seriousness of the injuries, fracture and effects and impact of the same. The appellant/claimant had suffered fracture over hip, sacrum and thigh bone. Therefore, it is common understanding that she would find it very difficult to do her normal work as well as tailoring work. The Tribunal has fixed the notional income at Rs.4,500/- and taken the disability as 20% by adopting multiplier-18. Taking into account the above said details in order to grant just compensation the disability is taken as 38% instead of 20% and the loss of disability is reworked as follows;

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Rs.4,500/- x 12 x 18 x 38% = Rs.3,69,360/-

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9. An amount of Rs.15,000/- is granted towards attender charges. Towards Loss of amenities and for the pain and sufferings undergone and of Rs.25,000/- and Rs.20,000/- in addition to the amount already granted. Towards Extra Nourishment and for transport expenses, an amount of Rs.10,000/- is granted in addition to the amounts already granted. In respect of other aspects, the amounts awarded appears to be reasonable and needs no interference.

10. The Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Earning Capacity	Rs.1,83,600/-	Rs.3,69,360/-	Enhanced
2	For Transport Expenses	Rs.10,000/-	Rs.20,000/-	Enhanced



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
3.	For Extra Nourishment	Rs.20,000/-	Rs.30,000/-	Enhanced
4	For Disfiguration	Rs.25,000/-	Rs.25,000/-	Confirmed
5	For Loss of Amenities and Expectation of Life	Rs.25,000/-	Rs.50,000/-	Enhanced
6	For Medical Treatment	Rs.3,89,000/-	Rs.3,89,000/-	Confirmed
7	For Pain and Sufferings	Rs.40,000/-	Rs.60,000/-	Enhanced
8	For Attender Charges	---	Rs.15,000/-	Granted
9	Total	Rs.6,92,600/-	Rs.9,58,360/-	
	90% of the compensation which the petitioner is entitled	Rs.6,23,340/-	Rs.8,62,524/- Rounded off to Rs.8,62,500/-	

11. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.6,23,340/- to Rs.8,62,500/-** which would carry interest at the rate of



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7.5% per annum from the date of numbering of petition ie., 11.03.2010
(excluding the default period if any).

12. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from
Rs.6,23,340/- to Rs.8,62,500/-.

(iii) The 3rd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.8,62,500/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per from the date of numbering of petition ie., 11.03.2010 (excluding the default period if any). till the date of deposit to the credit of M.C.O.P.No.805 of 2010 on the file of the Motor Accidents Claims Tribunal, (Special Sub Judge I dealing with MCOP Cases) Chennai within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty



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to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.08.2023

Vv

Index:Yes/No

Internet:Yes/No

To

1. The Motor Accidents Claims Tribunal,
(Special Sub Judge I dealing with
MCOP Cases) Chennai.
2. Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, Prince Towers, 4th Floor,
College Road, Nungambakkam.
Chennai-600 006.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.



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