

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.12.2016

Judgment Pronounced on : 29.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.163 of 2007

Susila

...Appellant/Petitioner

Vs.

1.V.Sambandam

2.The Branch Manager,

National Insurance Company,

No.62, T.S.R. Periya Street,

Kumbakonam.

...Respondents/Respodnents

(R2 name amended vide order of Court
dated 13.9.2012 in MP.No.1 of 2012 in
CMA.No.163 of 2007)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 16.6.2004 passed in MCOP.No.182 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Nagapattinam.

For Appellant : Mr.M.Thamizhavel

For Respondents: Mr.S.Vadivel [for R2]

R1 - Ex parte

JUDGMENT

In an accident that took place on 15.09.2001, the appellant/claimant aged 35 years, a coolie by avocation, had suffered injuries to her limb as a result of which her left leg was amputated below her knee, has sought a compensation of Rs. 5.0 lakhs on various heads, whereas the Tribunal has passed an award for Rs.1,06,800/- payable with interest @ 9% per annum. She has preferred this appeal seeking enhancement of compensation.

2. The learned counsel for the appellant highlighted what he considered as infirmities in the award in computing compensation for loss of leg due to amputation :

(a) P.W.2 has justly assessed the disability suffered by the appellant @ 70% whereas the Tribunal has arbitrarily reduced it to 30% . The Tribunal has notionally fixed the monthly income of the claimant as low as Rs.1,500/-. In this regard, the appellant being a woman, not only her income from her avocation has to be reckoned, but the extent to which her injury would have impacted her contribution to other house-hold responsibilities should also be justly valued.

(b) On the heads of pain and suffering, transport and medical expenses, the Tribunal has given a consolidated amount of Rs.15,000/-, which may be termed paltry by any standards. Even on the date on which the Tribunal has notionally fixed the income, it has not awarded anything for loss of income during the treatment period. Nor has it awarded anything on the heads such as compensation for assistance and future medical facilities since a loss of limb requires regular replacement of artificial limb.

The learned counsel for the appellant submitted that the entire compensation awarded to the appellant needs to be re-looked based on the authorities in Sarala Varma & Others Vs Delhi Transport Corporation & Another [2009(2)TNMAC 1(SC)], Santosh Devi Vs National Insurance Co., Ltd., [2012(2) TNMAC 1 (SC)] and Rajesh Vs Rajbir Singh [2013 (3) CTC 883].

3. Per contra, the learned counsel for the second respondent submitted that the accident had taken place in the year 2001, and going by the cost of living in the year 2001 and the methodology generally adopted by the Tribunal in the matter of awarding compensation, its approach could not be faulted. At any rate, the multiplier 17 is not an appropriate multiplier and based on Sarala Varma case, the suitable multiplier is 16.

4. Here is an agonising tale of a woman who has lost a leg in a road accident, a situation that was forced on her, and the Tribunal by an incomprehensible logic or reason, neither of which this court could appreciate, has reduced the rate of disability from 70% to 30% and also did not think it fit to treat it as a case of functional disability. That the victim was a coolie at the relevant time was not in dispute and what would a coolie, someone who already battles her economic disadvantage, do after losing a leg? Would it not affect her means to her livelihood? In addressing situations such as this, it would be appropriate for a Tribunal to put itself in a situation similar to the one the victim has encountered and then to look at life before it. Computing compensation is not just filling a few blanks with few numbers but taking a pragmatic view about life, its challenges, and engaging in a purposive pursuit with a right blend of <https://hcservices.secours.gov.in/hcservices> and justness. Here the approach of the Tribunal is seen sailing at a distance.

5. The accident has happened in 2001. The life's experience in this country is that a woman is required to be multi-tasking and no matter whether she is working or not, taking care of the household is a responsibility that she can hardly afford to ignore, and hence it is necessary to go for her real value and to translate it in money value. This therefore, would be a combination of her earnings as well as the value of her contribution to her family. I hence fix Rs.2,500/- p.m. to be reasonable going by 2001 standards. The suitable multiplier is 16 and this has to be reduced to 70%, the extent of functional disability which in my considered view is appropriate. Accordingly, the loss of her earning capacity is $2500 \times 12 \times 16 \times 70\% = 3,36,000/-$ For other heads compensation is fixed as below :

Heads	Amount Enhanced (Rs.)
Loss of earning capacity owing to functional disability	3,36,000/-
Pain and suffering	75,000/-
Medical Expenses	10,000/-
Assistance	10,000/-
Loss of income for 5 months @ Rs.2,500/- per month	12,500/-
Future medical expenses	25,000/-
Other Amenities	10,000/-
Total	4,78,500/-

6. This appeal is partially allowed and the compensation payable is enhanced from Rs.1,06,800/- to Rs.4,78,500/- and the respondents are directed to deposit Rs. 4,78,500/- with interest at 9%, less any amount already deposited within four weeks from the date of receipt of copy of this order whereupon the claimant/appellant is permitted to withdraw the same forthwith. No costs. The appellant is directed to pay the necessary court fee for the enhanced amount.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1.The Motor Accidents Claims Tribunal,
Additional Sub Court,
Nagapattinam.

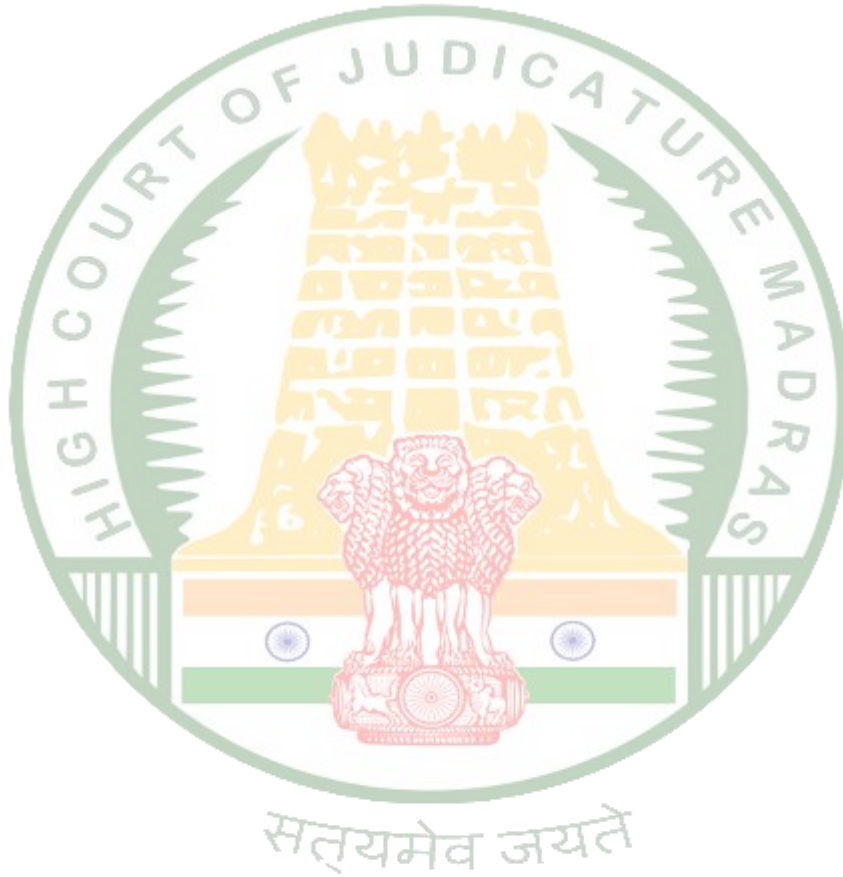
2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.M.tamizhavel, Advocate SR.No.11915

+1cc to Mr.S.Vadivel, Advocate SR.No.11845

CMA.No.163 of 2007

SDR 21.03.2017



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