



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
C.M.A. (MD) No.1141 of 2016

Chinnathai

...Appellant/Petitioner

Vs.

1.Swaminathan

2.The United India Insurance Company Ltd.,
Rep.by its Regional Manager,
S.N.S Complex First Floor,
52, South Masi Street,
Madurai.

...Respondents/Respondents

Appeal filed under Section 173 of Motor Vehicles Act, 1988, to admit this appeal and enhance the compensation awarded in the Judgment and Decree dated 08.02.2016 on the file of the IV Additional Sub-Court, Madurai, in M.C.O.P.No.138 of 2012 as claimed in the memorandum of Valuation of this appeal.

For Appellant : Mr.M.Neethipandian
for Mr.B.Tamilnidhi

For Respondents : Mr.I.Suthakaran for R2
No appearance for R1.

JUDGMENT

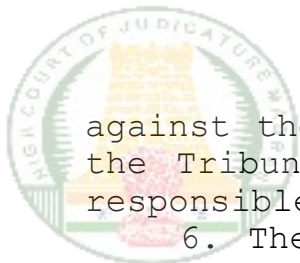
An accident completely took away the active life of an young lady aged about 22 years old in the accident occurred on 09.01.2011, when she was returning to her home, by walking from North to South along along Madurai to Theni Main Road, which dashed against the petitioner. Therefore, the claim petition was filed.

2. On contest, the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the lorry and awarded a sum of Rs.1,97,110/- (Rupees One Lakh Ninety Seven Thousand One Hundred and Ten only) by awarding Rs.2,000/- for 1% disability by reducing the permanent disability sustained by claimant from 62% to 55%.

3. Aggrieved by the quantum of the Tribunal, the claimant is before this Court.

4. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the second respondent Insurance Company.

5. There is no appeal by the Insurance Company or the owner regarding the conclusion on the negligence that the driver of the lorry alone is responsible for the accident. Hence, it attained finality. Even otherwise based on the evidence of PW.1 and PW.2 eye-witnesses and filing of Ex.P1-F.I.R and Ex.P3-Charge sheet



against the driver and conviction against the driver as per Ex.P4, the Tribunal rightly found that the driver of the lorry alone is responsible for the accident.

6. The appellant sustained fractures in her both bones in her left leg and left leg got crushed between knee to ankle and she was taking treatment from 09.01.2011 till 17.03.2011 for more than 67 days. The surgeries were conducted and plates and screws were implanted in the let leg. Skin crafting was also done. PW.3-Doctor adduced that the appellant's left leg completely got crushed and blood circulation on the foot was blocked and there was no movement in fingers and in spite of implanting plates and screws, the appellant could not move her leg and she is unable to walk independently and she is unable to walk; unable to stand, unable to lift heavy objects, unable to squat and unable to do any work. PW.3-Doctor categorically deposed that the length of the left leg got reduced to 2 1/2 c.m and the leg got swollen and she could walk only with walker and that the limb and Tibia and Fibula bone got bent as per Ex.P5, P7 and P10 medical records; Ex.P6-discharge summary. Ex.P11- Disability Certificate would show the names of injury which reads as follows:-

"7.Name of Injury: She has moderate to sever pain in Lt.Leg, Lt.ankle & Lt-foot & heel areas, when he stand for some time, walks short distances & go up & down the stair case. She has an ugly scar entire circumference of Lt.leg measuring 26 cms sensation in the scar is much reduced. SSG donar scan both thighs. Lt.ankle is in fixed equinus deformity 40 decreeNo. Dorsi flexion. Toe movements only minimal. Shortening Lt lower limb 2.5 cms. Swelling below the Lt.leg scar extending upto the ankle & foot. Wasting of Lt.thigh muscles by 1 1/2 cm, Lt.leg muscles by 4 cms & muscle power Lt.knee is less by 1 1/2 grade. She walks with walker. She cannot squat Cvoss legged or on honches & difficulty in walking an uneven surfaces, slope surfaces & in steps.

11.Break-up details of disability:- A) Moderate to severe pain
disability:- &Deep

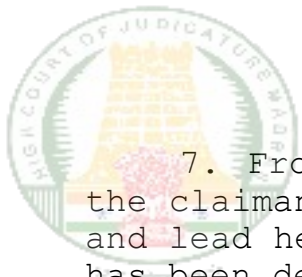
Complications malunion-
Extra points **-10**

B)Lt.ankle in fixed equinus
defarmity, No Dorsiflexion &
reduced Toe movements,
loss of power Lt.Knee-
Mobility component **-30**

C)Not able to Squat,Walk
on uneven surfaces,
slope surfaces
& steps-Stability component **-18**

D) Shortening Lt.lower limb **-4**

Partial Permanent Disability of **62%"**



7. From the above, it is clear that the injuries sustained by the claimant are very serious and as a result, she is unable to walk and lead her normal life as stated above. Therefore, 62% disability has been determined by P.W.3 - Doctor.

8. However, the Tribunal, considering all the records determined the disability at 55%. In fact, the appellant is unable to do any normal work and she cannot do any active avocation. Though this Court is convinced 100% loss of earning power and the Tribunal determined 55% disability, this Court finds that the appellant would have lost 55% as loss of earning power.

9. Hence, the multiplier method has to be adopted taking into consideration the nature of injuries and the disability sustained by the claimant. Hence, awarding of compensation based on percentage adopted by the Tribunal is set aside.

10. The appellant was hardly 22 years at the time of the accident and the accident occurred on 09.01.2011. Therefore, this Court is inclined to follow the judgment in **Syed Sadiq, etc -Vs- Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, where a sum of Rs.6,500/- was determined for a vegetable vendor who sustained injuries in the accident occurred on 14.02.2008. Whereas in this case, the accident occurred in the year 2011 and in the absence of any material records to prove the income, since the claimant is aged about 22 years, 50% has to be added towards future prospects and the loss of income of Rs.9,750/- along with future prospects.

11. As this Court follows the multiplier method, according to the age of the victim, the multiplier to be applied is '18' and therefore, the loss of income would be $\text{Rs.6,500} + 50\% \times 12 \times 18 \times 55/100 = \text{Rs.11,58,300.00}$. When one leg got crushed with all disability, it is impossible for a lady to get marriage. Not only causing disability in her body, her marriage prospectus was completely in dark. Therefore, this Court awards a sum of **Rs.2,00,000/-** (Rupees Two Lakhs only) towards loss of marital prospects. A sum of **Rs.1,00,000/-** (Rupees One Lakh only) awards towards pain and sufferings undergone by the claimant due to the accident. A sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal towards extra nourishment, is enhanced to **Rs.50,000/-** (Rupees Fifty Thousand only) and a sum of Rs.5,000/- (Rupees Five Thousand only) awarded by the Tribunal towards transportation expenses is enhanced to **Rs.20,000/-** (Rupees Twenty Thousand only). For three months treatment as inpatient, a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) is awarded. Similarly, a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) is awarded towards attendance charges. For the disability caused and ugly look created by the accident, this Court awards a sum of **Rs.1,00,000/-** (Rupees One Lakh only). A sum of **Rs.17,610/-** (Rupees Seventeen Thousand Six Hundred and Ten only) awarded by the Tribunal as per medical bills submitted is confirmed. A sum of **Rs.1,000/-** (Rupees One Thousand only) awarded by the Tribunal towards loss of articles and dress is also



confirmed. A sum of Rs.10,000/- (Rupees Ten Thousand only) awarded by the Tribunal without any heading is deleted. This Court awards a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) towards future medical expenses.

12. Accordingly, the award amount of Rs.1,97,110/- (Rupees One Lakh Ninety Seven Thousand One Hundred Ten only) is enhanced to Rs. **Rs.17,36,910/-** (Rupees Seventeen Lakhs Thirty Six Thousand Nine Hundred Ten only).

13. Accordingly, the appellant/claimant is entitled to a sum of **Rs.17,36,910/-** (Rupees Seventeen Lakhs Thirty Six Thousand Nine Hundred Ten only), and the rate of interest at 7.5% per annum awarded by the Tribunal remains unaltered.

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed. No costs.

(ii) The appellant/claimant is entitled to a sum of **Rs.17,36,910/-** (Rupees Seventeen Lakhs Thirty Six Thousand Nine Hundred Ten only), along with the interest at the rate of 7.5% per annum from the date of petition till date of realisation and also proportionate costs;

(iii) The second respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs to the credit of M.C.O.P.No.138 of 2012 on the file of the IV Additional Sub-Court, Madurai, less the amount already deposited, if any, within a period of **twelve weeks** from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal shall permit the appellant/claimant to withdraw only **Rs.7,00,000/-** (Rupees Seven Lakhs only) and the balance amount shall be kept in an interest bearing fixed deposit, at least for a period of ten years and thereafter only, the Tribunal can transfer the balance amount to her personal Savings Bank Account Number through *RTGS/NEFT* system within a period of **four weeks thereafter**. At no circumstances, other than the amount of Rs. **7,00,000/-** (Rupees Seven Lakhs only) shall be allowed to be withdrawn, except after completion of ten years.

(vii) The appellant/claimant is directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment.

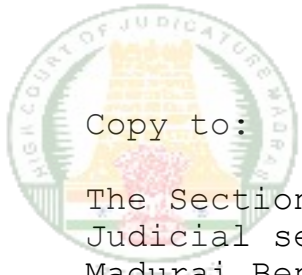
Sd/-

Assistant Registrar(CO)

/True Copy/

Sub-Assistant Registrar

TO



Copy to:

The Section Officer,
Judicial section(A.E)
Madurai Bench of Madras High Court,
Madurai.

(For Collecting additional Court fee, on Ordered by this and there
after sending the case to C.O.Section Court the drafting decree)

+1 cc to MR.B.TAMILNIDHI,ADVOCATE,SR NO.8977

+1 CC TO MR.I.SUTHAKARAN,ADVOCATE,SR NO.8976

gsr

MAS/RSK-SKN:21.03.2017:5P-5C

C.M.A. (MD) No.1141 of 2016
17.02.2017