



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

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THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.M.A (MD) .No.202 of 2013

WEB COPY

Soosai Mary

.. Appellant/Petitioner/Claimant

Vs.

1. Senthil Kumar

2. Reliance General Insurance Company Ltd.,
through its Branch Manager,
Heavitree,
Unit No.1, 3rd Floor,
No.23, Spur Tank Road,
Chetpet,
Chennai -31.

... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award, dated 03.08.2010, made in M.C.O.P.No.1057 of 2008 by the Motor Accident Claims Tribunal / Additional District Sessions Judge cum Fast Track Court No.I, Tirunelveli.

For appellant : Mr.T.Selvakumaran

For 1st respondent : No appearance

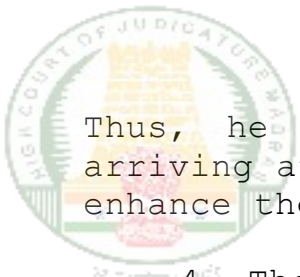
For 2nd respondent : Mr.V.Sakthivel

JUDGMENT

Heard the learned counsel appearing for the appellant / claimant and the learned counsel appearing for the second respondent / Insurance Company.

2. It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.2,12,000/- as compensation with 7.5% interest per annum from the date of petition till the date of realization. The appellant / claimant has filed this appeal seeking to enhance the compensation awarded by the Tribunal.

3. The learned counsel appearing for the appellant / claimant submitted that due to the accident, the right leg of the claimant is amputated and before the accident, she was working as coolie and earning a sum of Rs.4,000/- per month. Now, she lost her avocation and she depends on other even for her basic needs. Though the Tribunal has taken the disability of the claimant as 75%, without adopting the multiplier method, the Tribunal has awarded only a sum of Rs.2,000/- per percentage of disability.



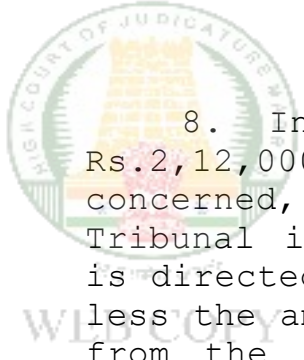
Thus, he requested this Court to adopt multiplier method for arriving at a loss of income due to disability and accordingly, to enhance the compensation amount.

4. The learned counsel appearing for the second respondent / Insurance Company would submit that the Tribunal has rightly awarded a sum of Rs.2,000/- per percentage of disability towards loss of income and the same need not be interfered with.

5. The date of the accident is on 05.10.2006. The age of the claimant, at the time of the accident, was 37 years. It is seen from the record that due to the accident, the claimant has lost her right leg. It is also seen from the record that the claimant had been earning a sum of Rs.4,000/- p.m. by doing coolie work before the accident. PW3 - Dr.Ramaguru has stated in the chief examination that the claimant has sustained 90% permanent disability in the accident. However, the Tribunal has taken disability of the claimant as 75% based on the admission made by PW3 in the cross examination that for the amputation of a leg above the knee, disability can be fixed upto 80%. Considering the fact that the claimant has sustained 75% disability and she has lost her avocation, the Tribunal ought to have adopted multiplier method for arriving at the loss of income due to disability. Hence, a sum of Rs.1,50,000/- awarded by the Tribunal towards disability by fixing a sum of Rs.2,000/- per percentage of disability is set aside.

6. Admittedly, the claimant has not produced any document in order to substantiate his contention that before the accident, she had been earning a sum of Rs.4,000/- per month by doing coolie work. While calculating the loss of income of the injured during the treatment period, the Tribunal took Rs.3,000/- p.m. as the income of the deceased. Considering the age and avocation of the claimant and year of the accident, this Court is of the view that Rs.3,000/- can be reasonably fixed as notional monthly income of the claimant and thus, the annual income of the claimant comes to Rs.36,000/- (3000 x 12 = 36,000). As per the decision of the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (2) TN MAC 1 (SC) : 2009 (6) SCC 121**, the proper multiplier would be 15, according to the age of the claimant. If the annual income of the claimant multiplied with 15, the total loss of income due to disability comes to Rs.5,40,000/-. As stated earlier, the claimant has sustained 75% of disability. Out of the total loss of income, 75% of the amount comes to Rs.4,05,000/-. Thus, Rs.4,05,000/- is awarded towards loss of income due to disability.

7. So far as the award passed on the other heads are concerned, this Court is not inclined to interfere with the same as the same are reasonably awarded by the Tribunal.



8. In view of the above, the award is enhanced from Rs.2,12,000/- to Rs.4,67,000/-. So far as the interest is concerned, the rate of interest i.e., 7.5 % p.a. fixed by the Tribunal is confirmed. The second respondent / Insurance Company is directed to deposit the entire award amount ie., Rs.4,67,000/-, less the amount already deposited, with accrued interest and costs from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs by filing a formal petition before the Tribunal. The appellant / claimant is directed to pay the Court fee, if any to be paid, for the enhanced amount, within a period of four weeks from the date of receipt of a copy of this judgment.

9. This Civil Miscellaneous Appeal is accordingly partly allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional District Sessions Judge
Fast Track Court No.I /
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.76784

+1cc to Mr.V.Sakthivel, Advocate Sr.No.76098

GCG

VB/SKN/SAR1/22.10.2018/3P/6C

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