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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NO.1140 OF 2014

Devi

... Appellant/Petitioner

.Vs.

1. C.Chinnammal

2. ICICI Lombard General Insurance Company Ltd.,
Rep. by its Managing Director,
No.140, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

... Respondents/Respondents

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 21.11.2012 passed in M.C.O.P.No.312 of 2008 on the file of the Motor Accident Claims Tribunal/Sub Court, Arni.

For Appellant : Mr.P.Satheesh Kumar

For Respondents : Mr.C.Elamurugan
For R2

No appearance
For R1

J U D G M E N T

The appellant is the claimant in MCOP.No.312 of 2008 on the file of the Motor Accident Claims Tribunal/Sub Court, Arni. She filed the claim petition under Section 166 (A) of the Motor Vehicles Act, 1988 praying to award compensation of Rs.4,00,000/- for the injuries sustained by her in a road accident on 31.08.2008.



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2. The case of the claimant is that on 31.08.2008, she was walking near her father's land and at about 01.00 p.m, a speeding LMV Harrester mounted with tractor bearing Registration No.TN 30 T 7315, hit her, as a result of which, she sustained injuries all over her body.

3. According to the claimant, the rash and negligent driving of the driver of the LMV Harrester mounted with tractor bearing Registration No.TN 30 T 7315, belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, ICICI Lombard General Insurance Company Limited both of them are jointly and severally liable to pay compensation.

4. The first respondent, owner of the LMV Harrester mounted with tractor bearing Registration No.TN 30 T 7315 remained absent before the Tribunal and therefore, he was set ex-parte. The second respondent, ICICI Lombard General Insurance Company Limited contested the claim petition. The learned Motor Accident Claims Tribunal/Subordinate Judge, Arni after analysing the evidence on record, awarded a compensation of Rs.43,500/- together with interest at the rate of 7.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.P.Satheesh Kumar, learned counsel appearing for the appellant/claimant would contend that though the claimant sustained a fracture on her hip and injuries all over her body, the Tribunal awarded very meagre amount of Rs.43,500/-, and that too, when Dr.Shanmugasundarm (P.W.2) had assessed the partial permanent disability as 40%. He therefore, prayed for enhancement of compensation.

6. Per contra, Mr.C.Elamurugan, learned counsel appearing for the second respondent, ICICI Lombard General Insurance Company Limited contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

7. A perusal of the discharge summary (Ex.P4) shows that the claimant sustained fractures on her collar bone and on her hip and she was admitted as an in-patient at VMC Hospital, Vellore on 31.08.2008 and discharged on 19.09.2008. It is pertinent to point out that the claimant was 14 years on the date of accident and though Dr.Shanmugasundaram had assessed the partial permanent disability as 40%, the Tribunal without analysing any reason had reduced the percentage of disability as 13.3% and awarded Rs.27,000/- towards partial permanent disability.



8. In the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 it is held that where the claimant suffers permanent disability as a result of injuries, the assessment of compensation under the head "loss of future earnings", would depend upon the effect and impact of such permanent disability on the earning capacity and that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. It is further observed that in most of the cases, the percentage of economic loss ie., percentage of loss of earning capacity arising from permanent disability would be different from the percentage of permanent disability.

9. Admittedly in the instant case, the Tribunal had awarded Rs.2,000/- per percentage after reducing the percentage of disability to 13.3% from 40%. The age of the victim is 14 years on the date of accident and as per the decision laid down in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 multiplier method should be adopted as far as the present case is concerned. Though the victim was not earning any sum as she was studying in a school, notional income is fixed at Rs.4,500/- for the purpose of calculating the loss of earning capacity. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Dr. Shanmugasundaram (P.W.2) had assessed the partial permanent disability suffered by the claimant as 40%. Therefore, 20% of disability is taken up as whole body disability for calculating loss of earning capacity. Considering the nature of injuries and the period of hospitalisation a sum of Rs.30,000/- is awarded to the claimant towards pain and suffering.

Loss of earning capacity

$$= \text{Rs.4,500/-} \times 12 \times 18 \times 20/100$$

$$= \text{Rs.1,94,400/-}$$

10. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of earning capacity	Rs.1,94,400/-
2.	Pain and sufferings	Rs.30,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-



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S.No.	Head	Amount granted
5.	Attender's charges	Rs.2,000/-
6.	Loss of amenities	Rs.1,00,000/-
7.	Medical expenses	Rs.3,500/-
8.	Damages to cloth	Rs.500/-
Total		Rs.3,45,400/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.43,500/- to Rs.3,45,400/- which would carry interest at the rate of 7.5% per annum.

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.43,500/- to Rs.3,45,400/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, within three weeks from the date of this orders and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent, ICICI Lombard General Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.3,45,400/- (less the amount already deposited) at the first instance and then recover the same from the 1st respondent/owner of the vehicle (since the driver was not in possession of a valid driving license on the date of accident), together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.312 of 2008 on the file of the Motor Accident Claims Tribunal/Sub Court, Arni within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar



mtl

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Arni.

Copy To:-

The Section Officer,
V.R. Section,
High Court,
Chennai - 104.

+1cc to Mr.P.Satheesh Kumar, Advocate, S.R.No.87566

C.M.A.NO.1140 OF 2014

PVS (CO)
PBS/14/06/2022