

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

C.M.A.No.177 of 2014

V.Shanthi

... Appellant/Claimant

Vs.

1. R.Srinivasan

2. The Manager,
Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
Nungambakkam, Chennai. ... Respondents /Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed in the above MCOP. No.45 of 2010, dated 18.04.2011, on the file of the learned Subordinate Judge, Motor Accident Claims Tribunal, Tiruttani.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For Respondents : Mr.K.Moorthy - R2
R1- Exparte

J U D G M E N T

सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Tiruttani, in M.C.O.P.No.45 of 2010.

2. The appellant is the claimant in M.C.O.P.No.45 of 2010, on the file of the learned Subordinate Judge / Motor Accident Claims Tribunal, Tiruttani. She filed the said claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules, claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by her in a road accident that took place on 01.05.2008.

3. The case of the claimant in nutshell is as follows:

On 01.05.2008, the claimant was sitting in Savithiri Ammal Bunk Stall at Tiruttani on Thiruvallur Road. At about 04.30 pm, a speeding Hero Honda Motor Cycle bearing Registration No. TN 20 AF 5721 hit the claimant, as a result of which, she sustained injuries all over her body. According to the claimant, the rash and negligent riding of the rider of the Motor Cycle bearing Registration No. TN 20 AF 5721 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent viz., the Reliance General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to her.

4. The owner of the Motor Cycle remained absent before the Tribunal and therefore he was set ex-parte. The second respondent contested the claim petition and the learned Subordinate Judge/Motor Accident Claims Tribunal, Tiruttani, after analysing the evidence on record, awarded a compensation of Rs.2,39,000/- to the claimant together with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal.

5. Mr.K.R.Ponnusamy, learned counsel appearing for the appellant contended that though the claimant was a daily labourer aged 30 years, earning a sum of Rs.200/- per day and sustained Grade-III(B) compound fracture on her right leg, the Tribunal did not adopt multiplier method for the purpose of calculating loss of earning capacity. His specific contention is that the Tribunal awarded a very meager amount of Rs.2000/- per percentage of disability. He also contended that the Tribunal has awarded very meager amounts on the other heads also and therefore, prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that after considering all the aspects of the case, the Tribunal has awarded a just compensation of Rs.2,39,000/- to the claimant and the same need not be disturbed at this stage.

7. Heard the learned counsel appearing for the appellant/claimant as well as the second respondent and also perused the materials available on record.

8. A perusal of the discharge summary (Ex.P2) issued by Shri Ramachandra Medical College and Hospital shows that the claimant was admitted as an inpatient on 01.05.2008 and discharged on 03.06.2008; she had sustained Grade-III (B) fracture on her right leg and an operation was also done for external fixtures on 03.05.2008.

9. In the decision in Raj kumar Vs. Ajaykumar and another, reported in 2011(1) SCC page 343, it is held that, when a claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of 'loss of future earnings', would depend upon the effect and impact of such permanent disability on his earning capacity. 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 held that in most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability would be different from the percentage of permanent disability.

10. In the instance case, it is specifically contended that the claimant was aged about 30 years and was a labourer. The accident took place in the year 2008 and therefore, her monthly income is fixed at Rs.5,000/-. The claimant has suffered Grade-III(B) fracture on her right leg and she could not do her work and therefore, multiplier method is warranted in the instant case. P.W.2, Dr.Thiyagarajan had assessed the permanent disability as 65%. He has also given cogent reasons for arriving at the said percentage of disability. Since, the age of the claimant is 30 years on the date of accident, the proper multiplier to be adopted in the instant case is '17', as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The loss of earning capacity is calculated as follows:

$$\text{Rs.5,000} \times 12 \times 17 \times 65\% = \text{Rs.6,63,000/-}$$

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

S.No	Description	Amount awarded by this Court (Rs)
1.	loss of earning capacity	6,63,000
2.	Pain and suffering	25,000/-

3.	Extra nourishment	10,000/-
4.	Attender charges	2,000/-
5.	Transport charges	5,000/-
6.	Loss of amenities	10,000/-
7.	Medical expenses	86,000/-
8.	Future Medical Expenses	15,000/-
	Total	8,16,000/-

No interest is awarded to compensation passed under the head future medical expenses. Thus, the sum of Rs.8,01,000/- would carry interest at the rate of 7.5% per annum.

12. In the result, the appeal is partly allowed. No costs. The 2nd respondent/Reliance General Insurance Company Limited is directed to deposit the entire compensation ie., Rs.8,16,000/- together with interest at the rate of 7.5% per annum on Rs.8,01,000/- less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.45 of 2011 on the file of the Subordinate Court / Motor Accident Claims Tribunal, Tiruttani. The claimant is directed to pay the additional Court fee within a period of three weeks from the date of this order. The Registry is directed to draft the decree only after receipt of the necessary Court fee. On such deposit being made by the Insurance Company, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

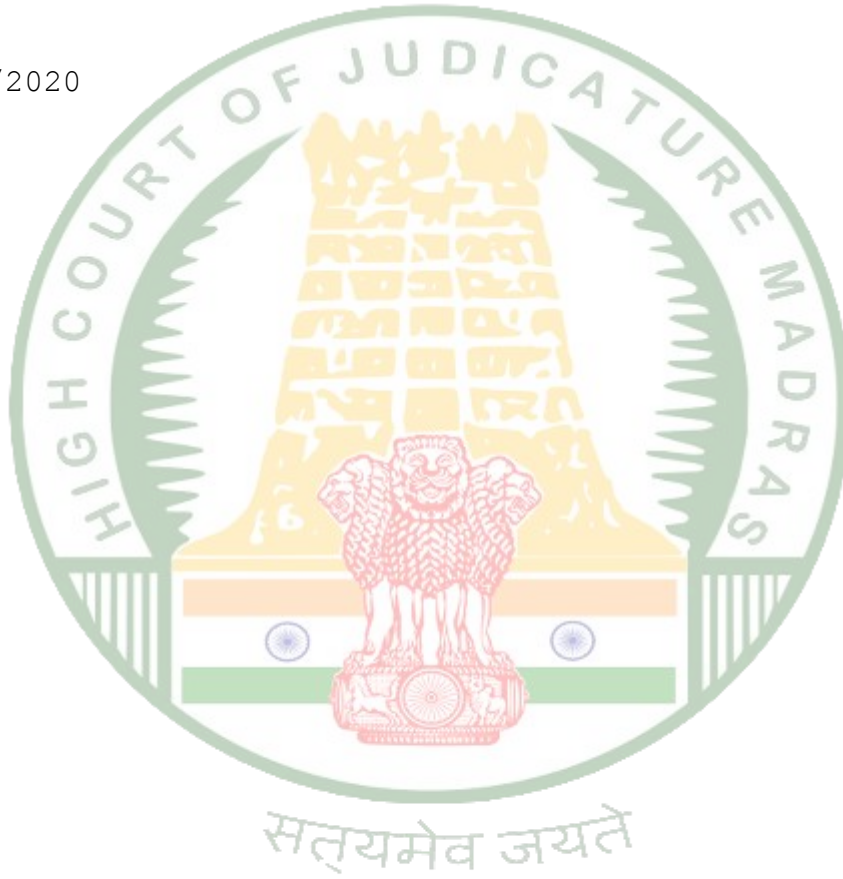
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruttani.

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

+1cc to Mr.Anand and Suryas, Advocate Sr.84040

C.M.A.No.177 of 2014

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