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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.2596 of 2012

N.Sudhamathy

... Appellant

Vs.

1.R.Dhakshinamurthy

2.Bajaj Allianz General Insurance Co.,  
Prince Tower, 5<sup>th</sup> Floor,  
No.25/26, College Road,  
Nungambakkam, Chennai -34.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award of the Hon'ble Motor Accidents Claims Tribunal (IV Court Small Causes) Chennai, dated 31.12.2009 in MACT OP No.2627 of 2003 in rejecting the claim of the appellant to the extent of Rs.9,82,450/- while allowing it only to the extent of Rs.2,15,400/- in a total claim of Rs.11,97,850/- (restricted to Rs.10,00,000/-).

For Appellant : Mr.K.S.V.Prasad

For Respondents : Mr.K.Poomalai for R2  
R1 notice unserved

#### J U D G M E N T

The order dated 31.12.2009 passed in MACT OP No.2627 of 2003, is under challenge in the present civil miscellaneous appeal.

2. According to the appellant, while the appellant and her husband with two mentally retarded children were travelling in an auto-rickshaw bearing Registration No.TN 05 6496 from Egmore Railway Station to their residence in Mylapore on 02.01.2002 at about 10.30 p.m., in the opposite direction, due to rash and negligent manner and at a very high speed, a vehicle bearing Registration No.TN 01 R 9758, dashed the auto-rickshaw. Due to which, the appellant, her husband and minor children sustained



grievous injury. Thereafter, the appellant filed a claim petition before the Motor Accident Claims Tribunal, Chennai.

3. The appellant adduced the documents before the Tribunal by proving the negligence on the part of the offending insured vehicle. On considering the evidence adduced by the appellant and the respondents, the Tribunal awarded a sum of Rs.2,15,400/- along with interest at the rate of 7.5% per annum. The appellant has preferred the instant appeal for enhancement of the compensation awarded by the Tribunal.

4. According to the appellant, two doctors were examined on the side of the appellant as P.W.3 & P.W.4. They deposed that the appellant has suffered 80% disability. Therefore, the compensation awarded by the Tribunal is meager and there is no just compensation arrived by the Tribunal. The appellant is also challenging the multiplier method adopted for granting compensation for the permanent disability suffered by the appellant. Under the other heads, the award passed by the Tribunal is inadequate.

5. The learned counsel for the respondent Insurance Company submitted that as per the evidence of the doctors P.W.3 and 4, she has suffered Internal derangement of right knee, fracture, premaxillary alveolus involving left upper 1,2,3 sockets and loss of 1 tooth, right shoulder severely hurt, cuts and abrasions over the body. Therefore, the Tribunal has rightly fixed the percentage for disability and further, for the other heads, the Tribunal has rightly awarded the amount. Therefore, the appeal is to be dismissed.

6. Heard the learned counsel for the parties and perused the records. It is an admitted fact that the appellant claimant was travelled on 02.01.2002 in the auto-rickshaw and on the opposite direction, the offending insured vehicle which came on the rash and negligent manner, dashed against the auto-rickshaw, wherein, the appellant has sustained grievous injury. Two doctors were examined on the side of the appellant. On perusal of the medical records Ex.P.34, Ex.P.35, Ex.P.36, Ex.P.37, Ex.P.38 deposed that the appellant has suffered 60% and 20% disability. According to the appellant, for the said 80% disability, the Tribunal ought to consider that she has permanently disabled and unable to move, walk and sit. Therefore, the appellant is entitled for adopting multiplier method for determining the compensation under the head of permanent disability.

7. The Tribunal has considered 80% of the disability. There is no evidence placed before the Court below to prove that due to the said 60% and 20% disability, the appellant was prevented to do the same business in future. Therefore, in the light of



the decision of the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and another reported in 2011(1) SCC 343 it has been held as follows:

"13. We may now summarise the principles discussed above:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanently disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

8. While dealing with the present case on hand, the appellant claimant has to establish before the Court that how the appellant claimant was prevented from carrying out the same business due to the disability and the same has to be discussed that due to the said disabilities, how she was completely prevented from earning any kind of income. This aspect was not properly explained by the claimant before the Tribunal. Therefore, in the absence of material or evidence, the said contention of the appellant is unjust and the same cannot be accepted, but certainly, the appellant had suffered 80% of the disability.

9. Further, it is also contended that she has undergone a medical surgery twice. The doctors were examined as P.W.3 and P.W.4. P.W.3 has assessed her disability at 60% and P.W.4 has assessed her disability at 20% on her face. In so far as 60% is concerned, the appellant has suffered grievous injury on right



shoulder, cuts and abrasions over the body. As far as 20% is concerned, fracture, premaxillary alveolus involving left upper 1,2,3 sockets and loss of 1 tooth.

10. Considering the aforesaid evidence as well as the nature of the injury sustained by the appellant, this Court fixes Rs.3,000/- for 60% disability and Rs.4,000/- for 20% disability on her face. The next contention of the appellant is that there is no adequate compensation was awarded by the Tribunal in respect of the conventional heads. There is some force in the contention of the appellant. Taking note of the aforesaid grievous injury and she was taken treatment in Hospital, she is entitled for the enhancement of compensation under the heads of convention.

11. On considering the aforesaid discussion, the appellant is entitled for the enhancement of compensation. Accordingly, the award passed by the Tribunal is modified as under:

| Heads                                         | Enhanced compensation |
|-----------------------------------------------|-----------------------|
| Permanent Disability (60%)<br>60% x Rs.3000/- | Rs.1,80,000/-         |
| Permanent Disability (20%)<br>20% x Rs.4000/- | Rs.80,000/-           |
| Loss of Income during the treatment period    | Rs.25,000/-           |
| Medical Expenses                              | Rs.1,59,000/-         |
| Pain and Sufferings                           | Rs.40,000/-           |
| Loss of Amenity                               | Rs.20,000/-           |
| Attendant Charges                             | Rs.18,000/-           |
| Future Medical Expenses                       | Rs.40,000/-           |
| Transportation to the Hospital                | Rs.10,000/-           |
| Extra nourishment                             | Rs.10,000/-           |
| Damage to the Clothes and Material            | Rs.2,000/-            |
| Total                                         | Rs.5,84,000/-         |



12. Accordingly, the appellant is entitled for Rs.5,84,000/- along with 7.5% interest. The Insurance Company shall deposit the enhancement of compensation amount within a period of six weeks from the date of receipt of a copy of this order. On such amount being deposited, taking note of the fact that the claim petition was filed in the year 2003 and the award passed in the year 2009, now more than 19 years lapsed for getting compensation. Therefore, in order to avoid further delay in getting compensation, on such amount being deposited by the Insurance Company, the appellant shall file an application to withdraw the amount within a period of two weeks thereafter.

13. Accordingly, C.M.A.No.2596 of 2012 stands allowed. No costs.

14. It is brought to the notice of this Court that at the time of filing the appeal, the appellant has not paid the Court fees. Therefore, the appellant has to pay the Court fees before the Tribunal.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk  
To

The Motor Accidents Claims Tribunal,  
(IV Court Small Causes) Chennai.

Copy to

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

+1cc to M/s.K.Poomalai, Advocate Sr.21702  
+3cc to M/s.KSV.Prasad, Advocate Sr.20579

C.M.A.No.2596 of 2012

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srg 16/07/2021