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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2106 of 2016 & 1773 of 2017
&
C.M.P.No.9525 of 2017

Rasammal

...Appellant in
CMA No.2106 of 2016
and
1st respondent in
CMA No.1773 of 2017

Vs.

1. P. Natarajan

...1st Respondent in
CMA No.2106 of 2016
and
2nd respondent in
CMA No.1773 of 2017

2. The Tamil Nadu State Transport
Corporation (Coimbatore) Ltd., Erode,
Rep. by its Managing Director,
Chennimalai Road,
Erode - 638 001.

.. 2nd Respondent in
CMA No.2106 of 2016
and
Appellant in
CMA No.1773 of 2017

Prayer in C.M.A. No.2106 of 2016: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of compensation amount awarded in the Fair and Final Order dated 07.06.2016 made in M.C.O.P. No.291 of 2015 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge Court), Erode.

Prayer in C.M.A. No.1773 of 2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.06.2016 made in M.C.O.P. No.291 of 2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode.



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For Appellant in CMA.No.
2106 of 2016 & 1st Respondent
in CMA.No.1773 of 2017 : Mr.R.Prabakaran

For 2nd Respondent in CMA.No.
2106 of 2016 & Appellant
in CMA.No. 1773 of 2017 : Mr.K.J.Shivakumar

COMMON JUDGMENT

C.M.A. No. 1773 of 2017 has been filed by the Transport Corporation and C.M.A. No.2106 of 2016 has been filed by the claimant challenging the very same award dated 07.06.2016 passed by the Motor Accident Claims Tribunal, Special Subordinate Court, Erode in M.C.O.P. No.291 of 2015.

2. Since both the appeals are arising out of the very same award, these appeals are disposed of by this common judgment.

3. Heard Mr.K.J.Shivakumar, learned counsel for the Transport Corporation and Mr.R. Prabakaran, learned counsel for the claimant.

4. The Transport Corporation has filed the Appeal questioning the quantum of compensation awarded by the Tribunal under the impugned award. The claimant has filed the Appeal seeking for enhancement of compensation. The details of the compensation awarded by the Tribunal to the claimant under the impugned award are as follows:

Heads	Amount Awarded by the Tribunal in Rs.
Loss of Income	13,500
Transport expenses	4,000
Extra nourishment	9,000
Damages for clothes and Articles	500
Medical expenses	85,200
Pain and sufferings	40,000
Disability and loss of earning power	88,000
Total	2,40,200

5. The cause of the accident has not been disputed by the Transport Corporation. The only issue that arises for



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9. Insofar as compensation towards pain and suffering at Rs.40,000/- is concerned, the same is also confirmed by this Court.



10. Insofar as the compensation awarded by the Tribunal towards disability and loss of earning power at Rs.88,000/- is concerned, it is on the higher side. The Tribunal has awarded the disability compensation at Rs.2,000/- per percentage of disability for 24% disability assessed by the Tribunal. The accident happened in the year 2015, this Court is of the considered view that after giving due consideration to the nature of the injuries sustained by the claimant, the disability compensation will have to be fixed at Rs.3,500/- per percentage of disability for 24% disability suffered by the claimant. If Rs.3,500/- per percentage of disability is taken into consideration, the disability compensation has to be reassessed to the claimant at Rs.84,000/- calculated at (Rs.3,500/- x 24%). The Tribunal has erroneously awarded compensation towards loss of earning power which cannot be granted as the claimant has already been awarded compensation towards disability as well as loss of income during the period of her treatment, which will amount to duplication. There can either be compensation awarded towards disability or towards loss of earning power but compensation cannot be awarded towards both the heads. The injuries sustained by the appellant / claimant does not entitle her to get compensation under the head loss of earning capacity by adopting the multiplier method. She is entitled only for disability compensation based on the percentage basis. For the foregoing reasons, this Court is awarding compensation only under the head "disability".

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.2,51,200/- from Rs.2,40,200/- as detailed hereunder:

Heads	Amount Awarded by the Tribunal in Rs.	Amount Awarded by this Court in Rs.
Loss of Income	13,500	26,000
Transport expenses	4,000	5,000
Extra nourishment	9,000	10,000
Damages for clothes and Articles	500	1,000
Medical expenses	85,200	85,200
Pain and sufferings	40,000	40,000



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Heads	Amount Awarded by the Tribunal in Rs.	Amount Awarded by this Court in Rs.
Disability and loss of earning power * head awarded by the Tribunal	88,000 *	84,000 #
Disability # head modified by this Court		
Total	2,40,200	2,51,200

12. In the result, the Appeal filed by the Transport Corporation in C.M.A. No.1773 of 2017 is dismissed as it does not deserve any merit and the Appeal filed by the claimant in CMA.No.2106 of 2016 is partly allowed by enhancing the compensation from Rs.2,40,200/- to Rs.2,51,200/-. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

13. The Transport Corporation/ Appellant in CMA.No.1773 of 2017 as well as the 2nd respondent in CMA.No.2106 of 2016 is directed to deposit the amount awarded by this Court, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and cost, to the credit of M.C.O.P.No.291 of 2015 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant in CMA No.2106 of 2016 as well as the 1st respondent in CMA No.1773 of 2017 through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant in CMA No.2106 of 2016 before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

2. The Section Officer,
V.R. Section,
High Court, Madras.

+1CC to Mr.K.J.Sivakumar, Advocate, Sr.No.51661

+1CC to Mr.C.E.Pratap, Advocate, Sr.No.51678

CMA.Nos. 2106 of 2016 &
1773 of 2017

SPD (CO)

K.RK. (19.11.2021)