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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4137 of 2019

C.Saraswathy  
W/o. Chinnadurai ... Appellant/Petitioner

Vs.

1.K.Murugan  
S/o.Krishnaswamy ...Respondent-1/Respondent-1

2. ICICI Lombard General Insurance Company Ltd.,  
No.84/85, 1<sup>st</sup> Floor,  
Arihant Plaza,  
Wall Tax Road,  
Chennai - 600 003. ....Respondents-2/Respondents-2

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow the appeal by enhancing the award and decree made in MCOP No.3147/2011, dated 26.09.2018 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai by awarding additional compensation of Rs.10,000,00/- with interest.

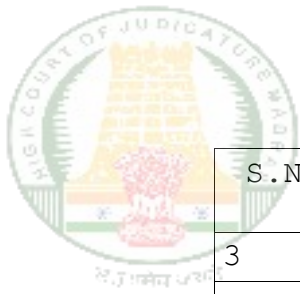
For Appellant : Mr.A.A.Venkatesan  
For Respondent-1 : No Appearance  
For Respondent-2 : M/s. Kumudha  
For M/s. K.Poomalai

#### JUDGMENT

This appeal has been filed by the claimant for enhancement of compensation awarded by the tribunal by impugned Judgement and decree dated 26.09.2018 in M.C.O.P. No.3147 of 2011 by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

2. By the impugned Judgement and decree, the tribunal has awarded a sum of Rs.3,24,300/- as detailed below:-

| S.No. | Heads of Compensation            | Amount Awarded by the Tribunal |
|-------|----------------------------------|--------------------------------|
| 1     | Loss of earning to to disability | Rs.2,43,750.00                 |
| 2     | Pain and suffering               | Rs.30,000.00                   |



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| S.No. | Heads of Compensation | Amount Awarded by the Tribunal |
|-------|-----------------------|--------------------------------|
| 3     | Extra Nourishment     | Rs.20,000.00                   |
| 4     | Transport to Hospital | Rs.10,000.00                   |
| 5     | Damages to Clothes    | Rs.1,000.00                    |
| 6     | Medical Expenses      | Rs.2,000.00                    |
| 7     | Loss of Income        | Rs.2,667.00                    |
| 8.    | Loss of Amenities     | Rs.10,000.00                   |
| 9     | Attender charges      | Rs.4,800.00                    |
|       | Total                 | Rs.3,24,217.00                 |
|       | Rounded off to        | Rs.3,24,300.00                 |

3. Challenging the quantum of compensation awarded by the tribunal, the learned Counsel for the appellant submits that the tribunal erred in awarding only a sum of Rs.2,43,750/- towards disability even though the evidence on record indicates the following injury:-

- (i) Pan palsy injury right hand,
- (ii) blunt injury right hand,
- (iii) fracture 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> and 6<sup>th</sup> Meta carpal right hand
- (iv) fracture ulnar styloid right hand

4. The learned Counsel for the appellant/claimant submits that due to the injuries suffered by the appellant/claimant, she has lost her avocation as a servant maid. He further submits that the tribunal unilaterally reduced the disability to 40% and on the aforesaid 40%, calculated the aforesaid compensation of Rs.2,43,750/- on 25% by considering functional disability.

5. Defending the impugned judgement and decree, the learned Counsel for the 2<sup>nd</sup> respondent/Insurance company submits that the impugned Judgment and decree is well reasoned and requires no interference. She submits that the tribunal awarded a Just compensation and therefore, the award amount may be confirmed by dismissing the present appeal.

6. I have heard the arguments advanced by the learned Counsel for the appellant and the 2<sup>nd</sup> respondent and perused exhibits which came to be marked by the tribunal and the depositions of P.W.1, P.W.2 and P.W.3./the physician who deposed evidence regarding the permanent disability.

7. From the nature of injury suffered by the appellant/claimant, it is evident that there is 100% functional disability as the appellant/claimant can no longer work as a house maid as one of her hand namely right hand, has



been paralyzed. Further, she has difficulty in raising her right upper hand and lifting heavy objects.

8. Considering the fact that the appellant/claimant cannot work as Ayah any longer, this Court is inclined to consider the functional disability of the appellant/claimant as 50% to award Just compensation. Since there is partial permanent disability, the appellant/claimant is also entitled to an addition towards future prospects at 15% as per the decision of the Hon'ble Supreme Court in Sanjay Verma vs. Haryana Roadways, (2014) 3 SCC 210.

9. In the result, the loss of earning is recomputed and the compensation awarded by the tribunal for a sum of Rs.3,24,300/- is enhanced to Rs.7,90,267/- as detailed below:-

| Heads and Calculation                                                    | Amount        |
|--------------------------------------------------------------------------|---------------|
| Loss of earning capacity:-<br>Monthly Income : Rs. 6,500.00              |               |
| Add: Future Prospects at 25%<br>(6,500 x 25/100) : Rs. 1,625.00          |               |
| -----<br>: Rs. 8,125.00                                                  |               |
| Less: 50% towards functional<br>disability (8,125x50/100) : Rs. 4,062.50 |               |
| -----<br>: Rs. 4,062.50                                                  |               |
| Annual Contribution to the family<br>(4,062.50 x 12) : Rs. 48,750.00     |               |
| Multiplier 13 (Rs.48,750x13) : Rs.6,33,750.00/-                          | Rs.6,33,750/- |
| Pain and Suffering                                                       | Rs. 30,000/-  |
| Extra Nourishment                                                        | Rs. 20,000/-  |
| Transport to Hospital                                                    | Rs. 10,000/-  |
| Damages to Clothes                                                       | Rs. 1,000/-   |
| Medical Expenses                                                         | Rs. 2,000/-   |
| Loss of Income                                                           | Rs. 2,667/-   |
| Loss of Amenities                                                        | Rs. 10,000/-  |
| Attender Charges                                                         | Rs. 4,800/-   |
| Total                                                                    | Rs.7,14,217/- |
| Rounded off                                                              | Rs.7,14,220/- |

10. The 2<sup>nd</sup> respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.7,14,220/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within



a period of eight weeks from the date of receipt of a copy of this Judgement.

11. On such deposit being made by the 2<sup>nd</sup> respondent/Insurance Company, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal.

12. This Civil Miscellaneous Appeal stands Allowed with the above observations. No costs.

Sd/-

Assistant Registrar (P & A)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident claims Tribunal,  
VI Court of Small Causes,  
Chennai.

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

+lcc to Mr.Venkatesan, Advocate, S.R.No.28341

C.M.A.No.4137 of 2019

MG(CO)  
GN(27/10/2021)