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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.744 of 2017

G.Nagalakshmi

....Appellant/Petitioner

Vs

1.K.Manikkam

2.M/s.Sri Ram General Insurance Company Ltd.,
No.E-8, EPIP RIICO,
Industrial Estate, Sitapura,
Jaipur, Rajasthan 302 022.

(R1 remained exparte before the Tribunal
hence notice may be dispensed with for R1)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.01.2015 made in M.C.O.P.No.401 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

For Appellant	: Mr.Lokesh for Mr.Ma.P.Thangavel
For Respondents	: R1-Exparte Mr.K.Poomalai for R2

J U D G M E N T

(This case has been heard through Video Conferencing)

Heard the learned counsel for the appellant and the second respondent.

2. The appeal is filed by the claimant being not satisfied with the quantum of compensation awarded by the Tribunal.

3 On 31.05.2011, when the claimant/appellant was walking along Namakkal to Salem main road, near Murugan kovil bus stop, Namakkal, a Mahindra Pickup Van bearing Registration No. TN 54 A 1876 proceeding towards Namakkal Town from Salem dashed against the claimant/appellant and caused multiple grievous injury. The claimant/appellant was taken to the Government Hospital, Namakkal and later shifted to MM Hospital, Namakkal for treatment. In the accident, the claimant/appellant sustained



compound fractures on head, hip, leg and hand. She filed claim petition seeking compensation for a sum of Rs.5,00,000 on the ground that she was earning Rs.6000/- per month as a Laundry Worker and due to the accident, she has substantially lost her earning capacity and also incurred medical expenses to a tune of Rs.1,00,000/-.

4. The Insurance Company filed counter stating that it was the negligence of the claimant, who suddenly crossed Namakkal to Salem Main road, Murugan kovil bus stop and invited the alleged accident. Further, the quantum of compensation and the liability to indemnify the vehicle owner was also denied by the Insurance Company.

5. Before the Tribunal, to substantiate her claim, the claimant examined herself and the doctor who gave the disability certificate. 11 exhibits were marked. The respondent Insurance Company filed Ex.R1, the rough sketch of the accident.

6. The Tribunal after considering the evidence placed before it awarded a sum of Rs.6,02,229/- rounded off to 6,02,200/-.

7. Considering the injury, it has applied multiplier method for the loss of income. The learned counsel for the appellant/claimant would submit that the notional fixation of Rs.5000/- as monthly income is very less and taking note of the fact that even for Homemakers Courts award Rs.6500/- as notional income, therefore the award of the Tribunal accordingly should be enhanced.

8. The learned counsel for the respondent would submit that the claimant sustained fractured injury of tibia and there is a shortage of limb by 2 cm for which the doctor has certified 45% permanent disability. This will not cause any loss of income to apply multiplier method. However, the Tribunal has accepted the percentage of injury and applied multiplier to compute the loss of income. While so, though the claim petition was restricted to Rs.5,00,000/-, the Tribunal has awarded higher compensation of Rs.6,06,200/- and therefore, there is no need to interfere the award. Learned counsel for the respondent would also submit that the claimant has not placed any evidence to show her earning capacity and therefore, fixation of Rs.5,000/- inclusive of future prospects as notional income need no interference.

9. This Court on considering the rival submission find that in the absence of any documentary evidence to show the avocation of the claimant, fixation of Rs.5,000/- as notional income based on the averments in the claim petition cannot be construed as unfair fixation. Furthermore, the Tribunal has applied multiplier method and accepted the percentage of disability



opined by the doctor. In view of the fact that the loss of income of the claimant/appellant cannot be restricted only with respect to her earning capacity as Laundry Worker but also as Homemaker and loss of future prospects, this Court is of the opinion that her monthly income can be notionally taken as Rs.6,000/- inclusive of future prospects and accordingly, compensation shall be fixed. In the result, the compensation is refixed as below:

Compensation under Various Heads	Award passed by this Court
Loss of income (6000X12X16X45/100)	Rs. 5,18,400/-
Medical Bills	Rs. 1,00,229/-
Transport expenses	Rs. 5,000/-
Pain and Suffering	Rs. 25,000/-
Nourishment	Rs. 5,000/-
Attender Charges	Rs. 10,000/-
Loss of amenities	Rs. 25,000/-
Total	Rs. 6,88,629 /-

10. Accordingly, the award of Rs.6,02,200/- is enhanced to Rs.6,88,629/- with 7.5% p.a. from the date of petition till the date of deposit. The award amount shall be deposited by the Insurance Company within a period of 8 weeks from the date of receipt of copy of the order. On such deposit, the claimant/appellant is permitted to withdraw the amount on appropriate application.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
Additional District Court, Namakkal.



Copy to

The Section Officar, VR Section, High Court, Madras

+1cc to Mr.K.Poomalai, Advocate, S.R.No.1675

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.1314

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CMA No.744 of 2017

MG (CO)

B.VC (19/08/2021)