



WEB COPY

C.M.A.(MD)No.503 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.09.2021

Delivered On : 21.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.503 of 2014

Selvi @ Ranjani

..Appellant/Petitioner

Vs.

1.K.Kanagaraj

2.S.A.Kaja Moideen

3.The Branch Manager,

National Insurance Co. Ltd.,

33, Premanantha Road, Contonment,

Trichy.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount of Rs.6,00,000/- payable by the third respondent by modifying the award made in judgment and decree dated 28.11.2011 made in M.C.O.P.No.342 of 2007 on the file of the M.A.C.T. Chief Judicial Magistrate, Karur.

For Appellant

: Mr.B.Sekar

For Mr.P.Ganapathi Subramanian

For 3rd Respondent

: Mr.J.S.Murali

For Respondents 1 and 2

: Exparte vide in E.B.

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.342 of 2007 dated 28.11.2011, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur.

2.The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The appellant herein filed a claim petition in M.C.O.P.No.342 of 2007, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 10.04.2007. The Tribunal has awarded a sum of Rs.6,66,135/- (Rupees Six Lakhs Sixty Six Thousand One Hundred and Thirty Five only) as compensation. Against which, the appellant has preferred this appeal.

<https://hcservices.ecourts.gov.in/hcservices/>



3. Brief substance of the claim petition in M.C.O.P.No.342 of 2007 is as follows:

On 10.04.2007, at about 07.15 a.m., the claimant was riding as a pillion rider in a motorcycle bearing registration No.TN47-L-2298. At that time, a lorry bearing registration No.TKU-6363 was driven by its driver in a rash and negligent manner without blowing the horn and hit against the motorcycle. The claimant sustained injuries. She was admitted in Karur Amaravathy Hospital and then she was admitted in Coimbatore Ganga hospital and she took treatment as 'in patient' from 10.04.2007 till 17.05.2007. The claimant claimed a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) as compensation.

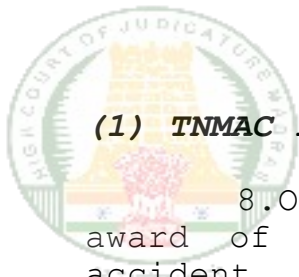
4. Brief substance of the counter filed by the third respondent therein is as follows:

The manner of the accident is denied. The injuries, disability, income are all denied. The interest claimed is excessive.

5. The respondents 1 and 2 are set exparte. On the side of the claimant, three witness were examined and 24 documents were marked. On the side of the respondents, one witness was examined and no documents were marked. After trial, the Tribunal has awarded a sum of Rs.6,66,135/- (Rupees Six Lakhs Sixty Six Thousand One Hundred and Thirty Five only) as compensation to be paid by the respondents 2 and 3. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of the award.

6. On the side of the appellant, it is stated that the claimant is a tailor. She was earning Rs.5,000/- per month. Due to multiple fractures she is not able to stand and work. She lost earning capacity. The Tribunal ought to have applied multiplier method. The Tribunal failed to consider the sufferings undergone by the appellant and that she was admitted in the hospital twice. She took treatment as 'in patient' for a period of 59 days. She undergone two surgeries. Plate and screw were inserted in her leg. Skin grafting treatment was given to the appellant. The amount to be enhanced to Rs.2,00,000/- for pain and sufferings. The appellant has to spent huge amount for maintaining and removing the plates and screw. The compensation under various heads has to be enhanced.

7. On the side of the appellant, it is further stated that the registration certificate of the partnership firm was marked as Ex.P21 and the salary certificate was marked as Ex.P22. The claimant was getting Rs.1,250/- (Rupees One Thousand Two Hundred and Fifty only) per week. The appellant has undergone two major surgeries. She cannot continue tailoring work. The multiplier method has to be adopted and the compensation under other heads has to be enhanced. In support of his contention, a judgment of this Court in the case of **New India Assurance Company Ltd., v. K.Suresh** reported in 2010



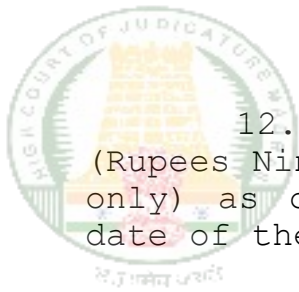
(1) **TNMAC 113** is cited.

8. On the side of the third respondent, it is stated that the award of the Tribunal is reasonable, considering the time of accident. The Tribunal has awarded separate compensation both for pain and sufferings and for mental agony, which is not correct. A prayer for Rs.25,00,000/- (Rupees Twenty Lakhs only) for loss of income for a Tailor is excessive. There is no necessity for the enhancement of compensation. There is no reason for applying multiplier method. In support of this contention, a judgment of this Court in the case of **The Branch Manager v. Mascomalar and others** reported in **2011 (1) TNMAC 1** is cited.

9. Ex.P1, FIR, chargesheet, Ex.P5, the judgment of the criminal Court, Ex.P6, the evidence of P.W.2 reveals that the accident took place due to the rash and negligent driving of the lorry driver. Ex.P7 and Ex.P9, discharge summaries, Ex.P13, X ray and Ex.P14, Ex.P15, photographs of the right leg of the appellant were marked. P.W.3 doctor has fixed the disability as 50%. The appellant is praying for applying multiplier method for fixing loss of income.

10. On the side of the third respondent, it is stated that already the Tribunal has awarded excessive amount and there is no necessity to apply multiplier method.

11. It is stated that the appellant was doing Tailoring work and was earning Rs.5,000/- (Rupees Five Thousand only) per month. Considering the disability, the appellant cannot do the tailoring work. There is no documents to prove that the appellant was earning Rs.15,000/- per month at the time of accident. Hence, the notional income is fixed as Rs.4,500/-. For 50% disability, the earning capacity of the appellant might to have reduced to 50%. Hence the monthly income has to be fixed as Rs.2,250/- (Rupees Two Thousand Two Hundred and Fifty only). The age of the appellant at the time of accident is 21 years and multiplier '17' is applicable. The loss of income is calculated as Rs.4,59,000/- (2250x17x12). Since compensation for loss of earning capacity is awarded, there is no amount awarded towards disability. For pain and suffering and mental agony, the Tribunal has awarded a sum of Rs.25,000/-, which is reasonable. The Tribunal has awarded a sum of Rs.4,38,435/- towards medical expenses, which is reasonable. The Tribunal has awarded Rs.50,700/- for transport expenses, which is excessive. It is decided that a sum of Rs.20,000/- is to be awarded for transport expenses. The appellant is entitled to a sum of Rs.5,000/- towards nutrition expenses and a sum of Rs.10,000/- towards future medical expenses. In total, the appellant is entitled to a sum of Rs.9,57,435/- (Rupees Nine Lakhs Fifty Seven Thousand Four Hundred and Thirty Five only) as compensation.



12.The appellant is entitled to a sum of Rs.9,57,435/- (Rupees Nine Lakhs Fifty Seven Thousand Four Hundred and Thirty Five only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The respondents 2 and 3 are directed to deposit Rs.9,57,435/- (Rupees Nine Lakhs Fifty Seven Thousand Four Hundred and Thirty Five only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by her earlier. The claimant is not entitled for interest for the default period, if there is any. The appellant is directed to pay the extra Court fee, if any. No Costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Karur.

Copy to

The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-29719[F] dated 21/09/2021)

C.M.A. (MD) No.503 of 2014
21.09.2021

NA (CO)

KB(30.09.2021) 4P 5C

<https://hcservices.ecourts.gov.in/hcservices/>