



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2022

PROUNOUNED ON : 10.06.2022

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.NO.3759 OF 2013

1. P.Ponnammal (died)
2. P.Ramasamy
[2nd Appellant brought on record vide
order dated 03.03.2022
vide CMP.No.11723 of 2021]

... Appellant/Claimant

Vs.

1. V.Sekar
2. S.Senthilkumar
3. The Oriental Insurance Company Ltd.
Arunagiri Complex, 25/C, Bye-Pass Road
Hosur, Krishnagiri District . PIN 635 109.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree of the Motor Accident Claims Tribunal (Sub Court) Perundurai, in MCOP.No.132 of 2009 dated 11.11.2010.

For Appellant : Mr.M.Rajeev Gandhi
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.R.Sivakumar for 3rd respondent.
R1 and R2 - no appearance

JUDGMENT

This appeal is filed by the appellant/injured claimant seeking enhancement of compensation. During the pendency of the appeal, appellant-Ponnammal died on 15.05.2017. Her son P.Ramasamy who is the sole legal representative of the deceased is brought on record.

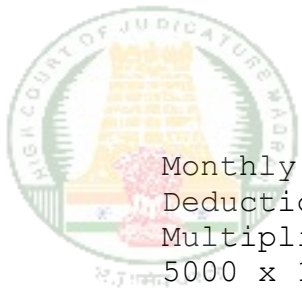


2. The brief facts of the case as per the averments of the claimant in MCOP.No.132 of 2009 is that on 13.02.2009 at about 3.45 p.m., while the petitioner was travelling on the moped as pillion rider, her husband was riding the said moped, when the moped was nearing Bharat Petrol Bunk, Perundurai to Chennimalai road, the first respondent carelessly drove the lorry TAA 7479 in a rash and negligent manner and dashed on the moped and thereby the petitioner/appellant sustained grievous injuries and her husband died on the spot. The petitioner was taken to KMCH, Perundurai and she was referred to KMCH Coimbatore, for further treatment from 13.02.2009 to 11.03.2009 as in-patient. The claimant having undergone, amputation and skin grafting said to have suffering with permanent disability and disfiguration. The claimant claimed Rs.7,50,000/- as compensation by filing MCOP.No.132/2009.

3. The Tribunal, after going through evidence let in before it, awarded a sum of Rs.2,82,157/- as compensation to the claimant. The learned counsel for the appellant/claimant raised the issue that the Tribunal erred in fixing the disability at 25% when P.W.2/doctor assessed disability at 46% under Ex.P.13. P.W.2 is an expert witness and his evidence cannot be brushed aside while fixing the disability percentage.

4. This court gone through the impugned Award carefully. It is seen that P.W.2 doctor opined that the appellant sustained 46% permanent disability. The appellant has lost 3 left foot fingers and amputation done; she got fracture on her right hand, also sustained permanent disfigurement. The injured was doing agriculture, cultivating vegetable and also doing milk vending. The appellant/claimant would have definitely earned Rs.5000/- per month before the accident. But due to the accident, she suffered amputation of foot fingers and suffered disfigurement and therefore, could not have been able to do her work as before and therefore, filed the appeal.

5. It is a matter of record that this appeal has been admitted on 23.01.2014 and the appellant was pursuing the matter before this court. However, she died on 15.05.2017 and there was a delay to bring the LRs on record. In such a situation, this court is of the view that for the pain and suffering underwent by the injured, the appeal filed by her needs proper justification. Therefore, for the disability suffered due to the accident, applying multiplier method to arrive at permanent disability compensation is just and proper. Accordingly, as per the assessment of doctor/expert, 46% permanent disability is taken for determining compensation. The calculation is as under:-



Monthly income - Rs.5,000/-

Deduction : 1/3rd

Multiplier : 11

$5000 \times 1/3 = 1666$ rounded off to Rs. 1700/-

$1700 \times 11 \times 12 = 2,24,400/-$.

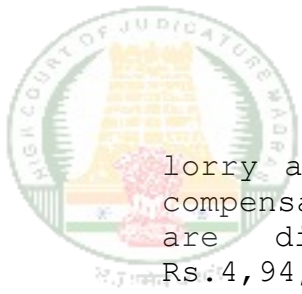
Therefore, the compensation under the head permanent disability is now enhanced from Rs.30,000/- to 2,24,400/-.

6. Under Medical Bills / Ex.P.10 series, Rs.2,34,907/- has been claimed and the tribunal awarded Rs.2,34,907/-. During the period of treatment, the appellant would have suffered loss of income. Therefore, for 3 months, Rs.15,000/- is awarded as loss of income during the period of treatment. Under the head "Extra Nourishment" tribunal awarded Rs.3000/-; for "Pain and suffering", Tribunal awarded Rs.5000/- which this court feels as inadequate, so it has been enhanced as Rs.5,000/- and Rs.10,000/- respectively.

7. Except for the above heads, the compensation granted under other heads are confirmed. The modified compensation by this court is as under:-

Sl. No.	Particulars	Tribunal Award (in Rs.)	Compensation modified by this court (in Rs)
	Permanent disability	30,000/-	2,24,000/-
	Transport to hospital	5,000/-	5,000/-
	Loss of income during the period of treatment	3,750/-	15,000/-
	Extra nourishment	3,000/-	5,000/-
	Damage to clothes	500/-	500/-
	Medical Bills	2,34,907/-	2,34,907/-
	Pain and suffering	5,000/-	10,000/-
	Total	2,82,157/-	4,94,407/-

8. In the result, the Civil Miscellaneous Appeal is Partly Allowed. The compensation awarded by the Tribunal at Rs.2,82,157/- is enhanced to Rs.4,94,407/-. The tribunal held that first respondent is the driver, the second respondent is the owner and the 3rd respondent is the insurer of the offending



lorry and all of them jointly and severally liable to pay the compensation. The said finding stands confirmed. The respondents are directed to deposit the modified compensation of Rs.4,94,407/- with interest at the rate of 7.5% per annum along with interest and cost before the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant+/Legal Representative is permitted to withdraw the same. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Perundurai.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.33939

+1cc to M/s.R.Sivakumar, Advocate, S.R.No.33784

C.M.A.No.3759 of 2013

MG(CO)
RLP(22/06/2022)