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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3540 of 2019

Rani

... Appellant/Claimant

-Vs.-

1. Babu

(Since R1 remained exparte before the Tribunal,
his presence may be dispensed with)

2. The Divisional Manager,

The New India Assurance Company Limited,
No.1, Officer's Line, Vellore.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act. 1988, against the judgement and decree dated 21.02.2018 made in M.A.C.T.O.P.No.195 of 2017 on the file of the Motor Accident Claims Tribunal, Court of Special Sub Court, Tiruvannamalai.

For Appellant : Ms.A.Subadra

For R1 : Exparte

For R2 : Ms.C.Sangamithirai

J U D G M E N T

The claimant is the appellant before this Court seeking enhancement of the award dated 21.02.2018 passed by the learned Special Sub Judge, MACT, Tiruvannamalai in M.C.O.P.No.195 of 2017.

2. The brief facts are as follows:-

The claimant had sustained injuries in a road accident involving the JCB vehicle belonging to the first respondent and insured with the second respondent. It is her case that on 10.07.2016 at 7.30 p.m., while she was working in her field, the driver of the first respondent's JCB vehicle was removing a palm tree in the adjacent land. He drove the vehicle in such a rash and negligent manner carrying the palm tree and that the palm



tree fell on the claimant, as a result of which, she had sustained fracture on her both knees and injuries all over the body. Therefore, the claimant has filed a claim petition, seeking compensation of a sum of Rs.5,00,000/-.

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3. The first respondent remained absent and was set ex-parte. The second respondent-Insurance Company had contested the case on all grounds available under Section 170 of the Motor Vehicles Act. They had pleaded that the accident had occurred only on account of the negligence of the appellant, since she has suddenly crossed the vehicle. They would further submit that there is a delay in filing the F.I.R, though the Police Station was near the site of the accident. They had also raised a plea that the driver of the JCB was not competent to drive the JCB vehicle, as he has possessed only Light Motor Vehicle driving licence. They had in all stated that the compensation claimed was too high and the claimant is not entitled to any compensation.

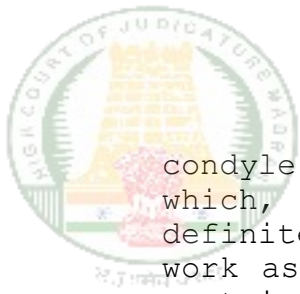
4. The Tribunal, on considering the evidence on record, proceeded to award the compensation under the head of Functional Disability on a percentage basis. However, the Tribunal has not given any reasons for awarding so. Aggrieved by the same, the appellant is before this Court.

5. It is the contention of the appellant that she had been assessed to a disability of 40% and she had also adduced evidence to show that she is unable to carry on the work as before. She was working as an agricultural coolie and the accident had also occurred, when she was so engaged. The statement has not been rebutted by the respondent, nor have they been able to elicit any contra evidence from the appellant. Therefore, it is her contention that the Tribunal ought to have adopted the multiplier method, since the appellant is unable to function as before, which has resulted in her losing her income considerably.

6. Ms.C.Sangamithirai, learned counsel appearing for the second respondent-Insurance Company, contended that the Tribunal has rightly awarded the compensation on a percentage basis, since the injuries are not a permanent or partial disablement and they were only simple injuries, which did not affect the future work of the appellant.

7. Heard both counsels and perused the materials available on record.

8. A perusal of Exhibit C-1-Disability Certificate, issued by the Medical Board, Thiruvannamalai Government Hospital would show that the appellant had suffered a fracture to her medial



condyle of femur extending upto the intercondylar eminence, for which, an implant has been carried out. The injury would definitely constrict free functioning of the appellant in her work as an agricultural coolie. In fact, the injury would also restrict her movements even in her household work. The appellant has adduced oral evidence to this effect, which has not been rebutted by the second respondent-insurance Company. Therefore, it has to be held that the appellant has sustained permanent or partial disablement, which is a functional disability and therefore, the compensation under the head of functional disability ought to have been on a multiplier basis. Since the accident is of the year 2016, a sum of Rs.10,000/- can be taken as the notional income of the deceased. The appellant is aged about 45 years at the time of the accident and therefore, the appropriate multiplier is 14. The compensation is therefore under the head of functional disability would be $\text{Rs.}10,000 \times 12 \times 14 \times 40\% = 6,72,000/-$. The compensation is therefore enhanced by a sum of Rs.5,52,000/-. Now, the compensation payable is sum of Rs.7,75,700/-.

Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
Functional disability	1,20,000.00	6,72,000.00 (10,000 x 12 x 14 x 40%)
Pain and sufferings	40,000.00	40,000.00
Loss of earning during the treatment period	30,000.00	30,000.00
Medical expenses	30,700.00	30,700.00
Extra nourishment	3,000.00	3,000.00
Total	2,23,700.00	7,75,700.00

9. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from Rs.2,23,700.00 to Rs.7,75,700.00. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.195 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such



deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Special Sub Judge, Motor Accident Claims Tribunal,
Tiruvannamalai.
2. The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+lcc to Mr.M.Malar, Advocate, S.R.No.21492

+lcc to Ms.C.Sangamithirai, Advocate, S.R.No.20983

C.M.A.No.3540 of 2019

AK(CO)
CT 21/04/2022