



C.M.A.No.2215 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.03.2022

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THE HON'BLE MR JUSTICE K.KALYANASUNDARAM

and

THE HON'BLE MR JUSTICE V.SIVAGNANAM

C.M.A.No.2215 of 2021 &

C.M.P.No.11432 of 2021

S.Selvi

W/o M.R.Sankar Ganesh

... Appellant

Vs.

1.A.Raji

S/o Arumugam

2.M/s United India Insurance Company Limited

No.14/1 – 77 B, Salem Main Road

Puduchampalli

Raman Nagar Post, Mettur Dam, Mettur Taluk

Salem District – 636 404.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation in the Judgment and decree dated 26.02.2020 made in M.C.O.P.No.178 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

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For appellant : Mr.Ma.P.Thangavel

For respondents : Mr.S.Arun Kumar, for R2

JUDGMENT

(Judgment of the Court was delivered by **K.KALYANASUNDARAM, J.,**)

This appeal is directed against the Judgment and award passed by the MACT(Chief Judicial Magistrate), Namakkal in M.C.O.P.No.178 of 2017 dated 26.02.2020 by the claimant seeking enhancement of compensation.

2.The brief facts of the case are that the claimant was travelling as a passenger in a Maxi Cab bearing Registration No.TN 52 U 5549 on 25.05.2016 along with some other persons. At that time, the vehicle hit against the centre median, got capsized and over turned. In the impact, the claimant sustained multiple fractures and grievous injuries. The claimant would state that she is an agricultural labour and she was earning a sum of Rs.15,000/- per month and at the time of accident, she was 35 years old. She claimed compensation of Rs.30 Lakhs, but the Tribunal has awarded a sum of Rs.21,50,000/-. Seeking enhancement, the present appeal has been filed.



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3.The appellant would submit that the finding on negligence has reached finality, since no appeal has been filed by the 2ndrespondent/Insurance Company, challenging the award of the Tribunal. According to the learned counsel, the notional income fixed by the Tribunal is very meagre and the award under the other heads also requires enhancement.

4.Per contra, Mr.S.Arun Kumar, learned counsel appearing for the 2nd respondent/Insurance Company would state that the Tribunal on proper appreciation of evidence has granted reasonable award and prayed for dismissal of the appeal.

5.In the case on hand, the claimant suffered grievous injuries in the accident that had taken place on 25.05.2016 and it is not in dispute. Exs.P.26 and 27 are the Wound Certificate and Discharge summary issued by Universal Hospital, Salem, show that the right limb of the claimant was amputated, and she had taken treatment as in-patient from 25.05.2016 to 21.06.2016. She underwent



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surgeries, during the treatment period. The claimant suffered permanent disability of 90% and based on the evidence, the Tribunal has fixed the age of the claimant as 34 years. Though the claimant has pleaded that she was earning Rs.15,000/- by doing agricultural coolie, the Tribunal fixed the notional income as Rs.6,500/- and added 50% towards future prospectus and the total income was fixed at Rs.9750/-.

6. Considering the submission made by the learned counsel for the appellant and the year of the accident, we are of the opinion that it would be appropriate to fix the income as Rs.9,000/- per month. That apart, addition of 50% towards the future prospectus is not in consonance with the directions issued by the Hon'ble Apex Court in the case of *National Insurance Co., Ltd., Vs. Pranay Sethi and others*. Therefore, 40% is added for future prospectus and total monthly income of the claimant is arrived at Rs.12,600/-. If proper multiplier of '16' is applied, the total loss of income would be Rs.24,19,200/- (Rs.12,600/- x 12 x 16). As per the Disability Certificate-Ex.P.82, she had permanent disability of 90%. So, the loss of earning capacity is arrived at Rs.21,77,280/- (Rs.24,19,200/- x 90%). The



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Tribunal has not awarded any amount under the heads 'attender charges' and 'loss of amenities'. Considering the nature of injuries and the period of treatment, this Court awards, Rs.20,000/- towards 'attender charges' and Rs.50,000/- towards Loss of amenities. In addition to that the amounts awarded by the Tribunal under other heads are confirmed. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>	<i>Enhanced/ Granted/ Confirmed / Reduced / Set aside</i>
1	Loss of income	16,84,800/-	21,77,280/-	Enhanced
2	Medical expenses	3,47,700/-	3,47,700/-	Confirmed
3	Transportation	10,000/-	10,000/-	Confirmed
4	Extra nourishment	7,500/-	7,500/-	Confirmed
5	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
6	Attender charges	---	20,000/-	Granted
7	Loss of amenities	---	50,000/-	Granted
	Total	21,50,000/-	27,12,480/- Rounded off to 27,13,000/-	Enhanced

7. In fine, this Civil Miscellaneous Appeal is partly allowed and the amount of Rs.21,50,000/- is enhanced to Rs.27,13,000/-. The rate of interest is 7.5% per



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annum from the date of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit is being made, the appellant/claimant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount already withdrawn, if any. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

(M.K.K.S.,J) (V.S.G.,J)

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order



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To

- 1.The Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.
- 2.The Section Officer, V.R.Section, High Court of Madras.



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and
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