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C.M.A.No.494 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.M.A.No.494 of 2021
CMP.No.3133 of 2021**

The Divisional Manager,
United India Insurance Company Limited,
104-A, Peramanur Main Road,
Peramanur, Salem – 7.

... Appellant

Vs.

1.Gangadevi

2.The Managing Director,
M/s.Sri Chellam Textiles Private Limited,
14/2, CP-A Chinna Goundapuram,
Ramalingapuram,
Salem – 636 106.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.12.2019 made in



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M.C.O.P.No.1498 of 2018, on the file of Motor Accident Claims Tribunal,
Special Subordinate Court No.II, Salem.

For Appellant : Mr.J.Chandran

For Respondents :M/s.C.Suresh for R1
No Appearance for R2

J U D G M E N T

(Judgment of the Court was delivered by S.SOUNTHAR,J.)

Aggrieved by the award passed by the Motor Accident Claims Tribunal, (Special Subordinate Court No.II), Salem, granting compensation amount of Rs.34,57,150/- to the first respondent/injured claimant, the Insurance Company of the vehicle involved in the road accident has come up with this appeal.

2. According to the first respondent, at the time of accident, she was aged about 16 years and was employed in second respondent spinning mills and drawing a salary of Rs.15,000/- per month. On 02.07.2016, when the petitioner was travelling in a Mahindra Tourister van bearing registration



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No.TN-54D-8999 owned by the second respondent mill, the driver of the vehicle had driven the vehicle in a rash and negligent manner and lost control of the same as a result of which, the van got capsized. The accident was caused due to the rash and negligent driving of the second respondent's van driver. In the accident, the 1st respondent sustained grievous injuries on her left hand and she was taken to Government Medical College Hospital, Salem, wherein, her left hand was amputated above elbow. Hence, she was constrained to file a petition claiming compensation. The second respondent/owner of the vehicle remained ex-parte before the Tribunal and the appellant/Insurance Company alone filed counter statement and contested the claim. In the counter statement filed by the Appellant/Insurance Company, it denied the disability suffered by the victim, apart from age and income. The Insurance Company also stated that the victim was not employed in second respondent mill and she travelled in a van only as a gratuitous passenger and hence sought for dismissal of the claim petition.

3. The Tribunal on consideration of oral and documentary evidence available before it, came to the conclusion that the first



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respondent/claimant was an employee of second respondent mill and due to amputation she suffered disability of 80% and consequently, granted an award for the above mentioned sum. Aggrieved by the same, the Insurance Company has preferred appeal before this Court.

4. The learned counsel for the Insurance Company submitted that the victim was a minor at the time of accident and hence her employment in second respondent mill was prohibited in law, hence she is not entitled to claim any compensation as an employee of the second respondent mill. He also submitted that every injuries or permanent disability arising from injuries do not result in loss of earning capacity and hence the Tribunal erred in adopting multiplier method. In support of his contention, he relied on the judgment reported in 2010(2) TNMAC 581 (SC) in [Raj kumar Vs. Ajay Kumar and another]. Further he contended that there is no evidence available on record to show artificial arm can be fixed considering the nature of injury suffered by the victim and hence the compensation awarded under the heads of future medical expenses and also fixation of artificial arm etc., have to be set aside.



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5. The learned counsel for the respondent submitted that the claimant was aged about 16 years at the time of accident and employment of any person above the age of 14 years is not prohibited under law. He further submitted that the victim was employed in the 2nd respondent spinning mill and amputation of her left arm, resulted in 100% of disability and hence fixation of 80% disability by Tribunal is very much on lower side and therefore, the amount of compensation awarded by the Tribunal need not be disturbed.

6. According to the appellant, the 1st respondent was not a worker of 2nd respondent and she travelled in a van as a gratuitous passenger. The 1st respondent, as PW.1 has categorically stated that she was employed by 2nd respondent and she travelled as an employee on the date of accident. The 2nd respondent, owner of the vehicle or representative of the Mill did not appear before the Tribunal inspite of witness summons being issued to them. The appellant has not taken any further steps for appearance of 2nd respondent. The evidence of 1st respondent in such circumstances is uncontroverted and has to be accepted. From the materials on record, it is seen that the accident occurred near the Mill. In view of the evidence that the 1st respondent is



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working in the Mill belonging to the 2nd respondent and she travelled as a mill worker has to be accepted. Section 2(ii) of Child and Adolescent Labour Prohibition and Regulation Act, 1986 defines the expression child as a person, who has not completed the age of 14 years. Admittedly, the victim was 16 years old at the time of accident. Therefore, the contention of the appellant that employment of victim in second respondent spinning mill is prohibited under law is not acceptable. Further, it is not case of the appellant that the second respondent engaged in any hazardous process and hence, the employment of adolescent is prohibited. Therefore, there is nothing on record to show that the employment of victim in second respondent spinning mill is illegal one. As far as the contention of the appellant that every injury will not result in a loss of earning power, in the case on hand, victim girl suffered amputation of her left hand above elbow. She was employed in a spinning mill and it is a matter of common knowledge, that both hands are absolutely necessary for an employee of a spinning mill to do his/her work and hence amputation of one hand will certainly result in interference with avocation of the victim. Therefore, there is nothing wrong in Tribunal adopting multiplier method while calculating the loss of dependency. As per entry (2) and (3) of



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part (ii) of schedule (i) to Employees Compensation Act 1923, in case of amputation below shoulder and above elbow, the percentage of loss of earning capacity should be in the range of 70% to 80%. We already held that the amputation of left hand seriously affects victim employability in second respondent mill. Hence, we hold the permanent disability suffered by victim can safely be fixed at 80% in the light of schedule (ii) to Employees Compensation Act 1923. The salary paid to the victim's was not established and hence the Tribunal adopted the notional income of Rs.7,500/- per month and the same is not excessive concerning the date of accident. Hence we confirm the amount of Rs.18,14,400/- awarded towards loss of functional disability. The first respondent suffered an amputation and she underwent treatment as an inpatient for nearly 28 days from 02/07/2018 to 28/07/2018. Considering the nature of injuries, treatment taken and amputation, the compensation of Rs.3,00,000/- granted towards pain and suffering is confirmed.

7. As per the decisions reported in 2010(2) TNMAC 581 (SC) in [Raj kumar Vs. Ajay Kumar and another] cited supra, when the compensation



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awarded by the Tribunal under the heads of loss of earning capacity exceeds

50%, awarding of the amount separately under the head loss of amenities is not necessary and only a token or nominal amount is to be awarded under the said head. Therefore, the amount of Rs.5,00,000/- awarded by the Tribunal towards loss of amenities is reduced to Rs.1,00,000/-.

8. The Tribunal awarded a sum of Rs.3,00,000/- towards fixation of artificial limb and Rs.1,00,000/- towards future medical expenses. There is no evidence available on record to show that fixation of artificial limb is possible for the victim, considering the nature of the amputation suffered. The first respondent/claimant has not examined any Doctor to show that in case of amputation of hand above elbow, fixation of artificial limb is possible. Likewise, there is no evidence regarding her claim for future medical expenses. Hence, the award under the head of future medical expenses and fixation of artificial limb are set aside. The award of Rs.3,00,000/- towards loss of marital prospects is confirmed. The amount awarded by the Tribunal in respect of various other conventional heads are not excessive and the same are confirmed.



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9. The award passed by the Tribunal is modified as follows:

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Functional disability	18,14,400	18,14,400	Confirmed
2.	Loss of pain and suffering	3,00,000	3,00,000	Confirmed
3.	Loss of amenities	5,00,000	1,00,000	Reduced
4.	Artificial limb	3,00,000/-	Nil	Set aside
5.	Future Medical expenses	1,00,000/-	Nil	Set aside
6.	Loss of Marital Prospects	3,00,000/-	3,00,000/-	Confirmed
7.	Loss of Income during treatment	6,750/-	6,750/-	Confirmed
8.	Transportation	15,000/-	15,000/-	Confirmed
9.	Extra Nourishment	1,00,000/-	1,00,000/-	Confirmed
10.	Attender Charges	20,000/-	20,000/-	Confirmed
11.	Damage of	1,000	1,000/-	Confirmed



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	Total	34,57,150/-	26,57,150/-	Reduced by 8,00,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.34,57,150/- is hereby reduced to Rs.26,57,150/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 7.5% p.a. 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 the 1st respondent is permitted to withdraw the said amount along with interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.1498 of 2018, if the entire award amount has already been deposited by them. Consequently connected Miscellaneous Petition is closed. No costs.



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(V.M.V., J)

WEB COPY (S.S., J)

27.06.2022

Internet : Yes / No

Index : Yes / No

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To

1.The Motor Accident Claims Tribunal,
Special Subordinate Court No.II, Salem.

2.The Section Officer

VR Section

High Court

Madras.

V.M.VELUMANI,J.

and

S.SOUNTHAR,J.

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and
C.M.P.No.3133 of 2021

V.M.VELUMANI, J.

and

12/15



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SUNDER MOHAN, J.

(Order of the Court was delivered by V.M.VELUMANI, J.)

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At the instance of the learned counsel appearing for the appellant, this matter is posted today under the caption “For Being Mentioned”.

2. Heard the learned counsel for the appellant and perused the materials on record.

3. It is represented by the learned counsel appearing for the appellant that in paragraph No.2 of the judgment of this Court dated 27.06.2022, the date of accident was mentioned as 02.07.2016 instead of “**02.07.2018**”.

4. In view of the above, paragraph No.2 of the judgment of this court dated 27.06.2022 is rectified as follows -

*“2. According to the first respondent, at the time of accident, she was aged about 16 years and was employed in second respondent spinning mills and drawing a salary of Rs.15,000/- per month. On **02.07.2018**, when the petitioner was travelling in a Mahindra Tourister van bearing registration No.TN-54D-8999 owned by the second respondent mill, the driver of the vehicle had driven the vehicle in a rash and negligent manner and lost control of the same as a result of which, the van got capsized. The accident was caused due to the rash and negligent driving of the second respondent's van driver. In the accident, the 1st respondent sustained grievous injuries on her left hand*



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and she was taken to Government Medical College Hospital, Salem, wherein, her left hand was amputated above elbow. Hence, she was constrained to file a petition claiming compensation. The second respondent/owner of the vehicle remained ex-parte before the Tribunal and the appellant/Insurance Company alone filed counter statement and contested the claim. In the counter statement filed by the Appellant/Insurance Company, it denied the disability suffered by the victim, apart from age and income. The Insurance Company also stated that the victim was not employed in second respondent mill and she travelled in a van only as a gratuitous passenger and hence sought for dismissal of the claim petition.”

5. Registry is directed to issue the fresh order copy, after carrying out the above corrections. The other contents of the judgment of this court dated 27.06.2022 shall stand unaltered.

(V.M.V., J) (S.M., J)
30.11.2022

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V.M.VELUMANI, J.
and

SUNDER MOHAN, J.

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30.11.2022