



WEB COPY

C.M.A.No.2076 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2076 of 2022

and

C.M.P.No.16063 of 2022

Reliance General Ins. Co. Ltd.,
Reliance House, 6th Floor,
Nungambakkam,
Chennai – 600 006.

.. Appellant

Vs.

1.B.Shylaja

2.S.Thangamani

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.12.2020, made in M.C.O.P.No.1083 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.K.Vinod

For R1 : Mr.R.Nalliyappan

J U D G M E N T



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

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the judgment and decree dated 03.12.2020, made in M.C.O.P.No.1083 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.1083 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. The 1st respondent / claimant filed the said claim petition, claiming a sum of Rs.43,00,000/- as compensation for the injuries sustained by her in the accident that took place on 02.07.2012.

3.According to 1st respondent, on 02.07.2012 at about 20.20 hours, while she was travelling as pillion in the motorcycle bearing Registration No.TN 07 BK 7743 from South to North on the Bells Road near Thiruvallikeni Kasturibai Gandhi Women's Hospital Backside Gate, the driver of the Tanker Lorry bearing Registration No.TN 04 U 3755, drove the same from the opposite direction in a rash and negligent manner without following the traffic rules and regulations, dashed against the motorcycle in which the 1st respondent was travelling as pillion



and caused the accident. In the accident, the 1st respondent sustained grievous injuries and suffered amputation over left hand, fracture over right hand, contusion over hip and multiple injuries all over the body. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent and appellant, being the owner and insurer of the Tanker Lorry respectively.

4.The 2nd respondent – owner of the Tanker Lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. The appellant denied the manner of accident as alleged by the 1st respondent. The appellant denied the validity of vehicle records, driving license of the driver of the Tanker Lorry and insurance coverage for the Tanker Lorry at the time of accident. The appellant denied the nature of injuries, period of treatment, disability and loss of income of the 1st respondent. If any negligence is fixed on the driver of the Tanker Lorry and the award is passed against the appellant, the 1st respondent is entitled to interest only as per the prevailing interest rate as per the provisions of Interest Act, 1978. The 1st respondent is not entitled to any interest for the period of delay



caused by her in furnishing the medical documents or disability certificate or any other documents. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition as against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and 15 documents were marked as Exs.P1 to P15. The Disability Certificate issued by the Medical Board was marked as Ex.C1 – Court Document. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tanker Lorry belonging to 2nd respondent and directed the appellant, being the insurer of the Tanker Lorry to pay a sum of Rs.21,56,550/- as compensation to the 1st respondent.

8.To set aside the said award dated 03.12.2020, made in M.C.O.P.No.1083 of 2017, the appellant has come out with the present appeal.

9.Though the appellant has raised a ground with regard to negligence, at the



WEB COPY

time of arguments, the learned counsel appearing for the appellant restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and submitted that the compensation awarded by the Tribunal towards loss of earning capacity is excessive. The Tribunal without any basis, erroneously fixed the loss of earning capacity of the 1st respondent at 55%. The Tribunal failed to appreciate the fact that percentage of physical disability of the claimant cannot be assumed to be the percentage of loss of earning capacity and also that all the injuries or the disability of a person does not result in loss of earning capacity. The 1st respondent failed to prove her avocation and income and also failed to prove that she did not do any work after the accident. In the absence of any proof with regard to age, avocation and income of the 1st respondent, the Tribunal erroneously fixed the age of the 1st respondent at 24 years, fixed a sum of Rs.15,000/- as monthly income of the 1st respondent and awarded compensation for 55% loss of earning capacity. The amounts awarded by the Tribunal towards medical expenses, pain and sufferings, extra nourishment and loss of future prospects are excessive. The total compensation awarded by the Tribunal is excessive and prayed for reducing the quantum of compensation awarded by the Tribunal.

10.The learned counsel appearing for the 1st respondent contended that in the



accident, the 1st respondent sustained amputation over left hand, fracture over right hand, contusion over hip and multiple injuries all over the body. The Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai examined the 1st respondent and certified that the 1st respondent suffered 55% disability and issued Ex.C1 / disability certificate to that effect. The Tribunal considering the nature of injuries, disability and the nature of work done by the 1st respondent, adopted multiplier method for granting compensation towards loss of earning capacity for 55% disability. At the time of accident, the 1st respondent was aged 29 years, was working as Event Manager at 'C' Square Event Management, Ashok Nagar, Chennai – 600 083 and was earning a sum of Rs.15,000/- per month. The 1st respondent has produced Ex.P11 / salary certificate to prove her avocation and income. The Tribunal considering Ex.P11, fixed a sum of Rs.15,000/- as monthly income of the 1st respondent. The Tribunal considering Ex.P15 / Aadhar Card of the 1st respondent, fixed the age of the 1st respondent at 24 years. The Tribunal considering Ex.P9 / Medical Bills and the period of treatment taken by the 1st respondent, has awarded compensation under different heads, which are not excessive. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the



learned counsel appearing for 1st respondent and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the 1st respondent that in the accident she sustained amputation over left hand, fracture over right hand, contusion over hip and multiple injuries all over the body. To prove the nature of injuries and disability suffered by her, the 1st respondent filed Exs.P2 to P4 / discharge summaries, Ex.P5 / outpatient record, Ex.P6 / wound certificate copy, Ex.P7 / radiology reports & Ex.P8 / lab reports and marked Ex.C1/ disability certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai. The appellant has not filed any document to disprove Ex.C1 / disability certificate. The Tribunal considering the nature of injuries, Ex.C1 / disability certificate and the nature of work done by the 1st respondent, adopted multiplier method for awarding compensation towards loss of earning capacity and the same is in order. It is the further case of the 1st respondent that at the time of accident, she was aged 29 years, working as Event Manager at 'C' Square Event Management, Ashok Nagar, Chennai – 600 083 and was earning a sum of Rs.15,000/- per month. The 1st respondent has produced Ex.P15 / copy of Aadhar Card and Ex.P11 / salary certificate to prove her age, avocation and



income. The Tribunal considering Ex.P15 – Aadhar card and Ex.P11 - salary certificate, fixed the age of the 1st respondent as 24 years and a sum of Rs.15,000/- as monthly income of the 1st respondent. The 1st respondent did not examine the author of Ex.P11 to prove her income. In the absence of any evidence to prove Ex.P11, a sum of Rs.15,000/- per month fixed by the Tribunal as notional income is not correct. Taking into consideration the date of accident, age and nature of work done by the 1st respondent, the notional income of the 1st respondent is fixed at Rs.9,000/- per month. The 1st respondent was aged 24 years at the time of accident. The Tribunal failed to grant any enhancement towards future prospects. As per the the judgment of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others]**, she is entitled to 40% enhancement towards future prospects. Thus, by fixing a sum of Rs.9,000/- per month as notional income, granting 40% enhancement towards future prospects and applying multiplier '18', the compensation awarded by the Tribunal towards loss of earning capacity is arrived at Rs.14,96,880/- {Rs.12,600/- [(Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)) x 12 x 18 x 55/100]}.

13.It is the case of the 1st respondent that she has taken treatment as inpatient in the Hospital for 20 days and filed three discharge summaries and marked the



same as Exs.P2 to P4. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are enhanced to Rs.20,000/-, Rs.10,000/- and Rs.20,000/- respectively as the amounts awarded by the Tribunal are meagre. In view of 40% enhancement granted by this Court towards future prospects, a sum of Rs.50,000/- awarded by the Tribunal towards loss of future prospects is liable to be set aside and it is hereby set aside. The amounts awarded by the Tribunal towards pain and sufferings and medical expenses are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	17,82,000/-	14,96,880/-	Reduced
2.	Pain and sufferings	30,000/-	30,000/-	Confirmed
3.	Medical expenses	2,69,517/-	2,69,517/-	Confirmed
4.	Attendant charges	5,000/-	20,000/-	Enhanced
5.	Extra nourishment	15,000/-	20,000/-	Enhanced
6.	Transportation	5,000/-	10,000/-	Enhanced
7.	Loss of future prospects	50,000/-	-	Set aside
	Total	Rs.21,56,517/- Rounded off to Rs.21,56,550/-	Rs.18,46,397/- Rounded off to Rs.18,46,400/-	Reduced by Rs.3,10,150/-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the



C.M.A.No.2076 of

compensation awarded by the Tribunal at Rs.21,56,550/- is hereby reduced to Rs.18,46,400/- 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 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, to the credit of M.C.O.P.No.1083 of 2017, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. On such deposit, the 1st respondent is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.1083 of 2017, if the entire award amount has been already deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S., J)
23.09.2022

krk

Index : Yes / No

Internet : Yes / No



C.M.A.No.2076 of

To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

V.M.VELUMANI, J.



WEB COPY



C.M.A.No.2076 of

and

T.V.THAMILSELVI, J.

krk

C.M.A.No.2076 of 2022

23.09.2022