

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Judgment Reserved on 22.04.2022	Judgment Pronounced on 06.05.2022
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**C.M.A(MD)No.282 of 2019**

Rajalakshmi .. Appellant/Petitioner

Vs.

1.P.Jegadeeshvaran

2.The Divisional Manager,
Oriental Insurance Company Limited,
First Floor, Loyola Building,
Salai Road,
Dindigul.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of award and decree, dated 24.07.2018 made in M.C.O.P.No.586 of 2017, on the file of the learned Special Sub-Judge, Dindigul.

For Appellant : Mr.N.Vallinayagam

For Respondent No.2 : Mr.C.Jawahar Ravindran

For Respondent No.1 : No appearance

JUDGMENT

The claim petitioner is the appellant herein seeking enhancement of compensation for the injury in the road transport accident happened on 23.10.2010.

2. The manner of the accident, the factum of the accident and the negligence on the part of the driver of the offending vehicle, ie., the driver of the first respondent, which is insured with the second respondent insurance company are not disputed and hence the same are hereby confirmed.

3. On the point of quantum of compensation both the parties are heard.

4. The tribunal has awarded Rs.4,12,000/- for the injury sustained by the claim petitioner. In respect of the nature of the injury sustained by the claim petitioner, she examined herself as PW1 and marked Ex.P1 to Ex.P8. Ex.P1 is the FIR copy and Ex.P2 is the



wound certificate. Ex.P8 is the disability certificate said to have been issued by the Medical Board.

5. On behalf of the second respondent/insurance company, on Court summon, Dr.Mugunthan, Orthopedic Surgeon, Government Headquarters Hospital, Dindigul, who is one of the panel doctors for issuance of Ex.P8, was examined as RW1. It appears that in the accident, PW1 has suffered femur bone fracture and there was a surgery initially and subsequently Implant was removed and hence, there was a mal-union on her right leg. As per Ex.P8-disability Certificate, disability is fixed at 70%.

6. Per contra, the evidence of RW1 is to the effect that the muscle fibre contraction in the right leg is at the maximum of 10% only and in the disability certificate-Ex.P8, details of assessment of percentage of disability was not spelled out. Further stated that in the right leg, there is a shortening of leg as compared to the left leg and muscles on the right leg are contracted and movement of the right leg and angular movement is restricted and the femur bone was mal-united and also admitted that he along with the another Dr.Sivakumar had issued the disability certificate.

7. Based upon the disability certificate-Ex.P8, at the rate of Rs.3,000/-per percentage, for 70% a sum of Rs.2,10,000/- has been awarded as compensation for partial permanent disability. As per Ex.P3-medical bill, Rs.95,000/- has been awarded as compensation. After going through the other heads of compensation, I find that the compensation awarded by the tribunal itself is on the higher side. Since no appeal is filed by the insurance company and there is no positive evidence to show that it has resulted in loss of earning capacity as stated in **Rajkumar's case** and hence, this Court is of the considered view that the medical evidence as spoken to by RW2 clearly demonstrate that there is no loss of earning capacity for applying the multiplier method and the disability fixed by the Medical Board is also appears to be on the higher side in view of the evidence of the one of the doctors in the panel of the Tamilnadu Medical Board and hence, I find that the compensation awarded by the tribunal itself is on the higher side and hence further enhancement does not arise.

8. In the result, this Civil Miscellaneous Appeal stands dismissed, since this civil miscellaneous appeal is on the side of the claimant. No Costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL



To

The Special Sub-Judge/
Motor Accidents Claims Tribunal,
Dindigul.

Copy to:

The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.282 of 2019
06.05.2022

MGJ(06.06.2022) 3P 4C