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C.M.A.No.1061 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1061 of 2020

M.Anifa

... Appellant

Vs.

1. Chennappan
2. The Manager,
The Oriental Insurance Company Limited,
Bub 3rd party claims,
Vijayalakshmi Complex, 1st Floor,
No.32/13, Phase No.2,
Sathuvachary,
Vellore – 632 009.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 22.08.2019 made in M.C.O.No.702 of 2018 on the file of the Special Motor Accident Claims Tribunal / the Special Sub Court, Tiruvannamalai.

For Appellant : Mr.S.Panneer Selvam

For Respondents : Mr.R.Ganesan for R2

R1 Notice Served



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JUDGEMENT

The Civil Miscellaneous Appeal filed against the Judgement and Decree dated 22.08.2019 made in M.C.O.No.702 of 2018 on the file of the Special Motor Accident Claims Tribunal / the Special Sub Court, Tiruvannamalai.

2. It is the case of the appellant that on 05.08.2018, at about 8:30 pm, when the injured claimant was travelling as a pillion rider in the vehicle bearing registration No.TN 25 AH 7612, the auto bearing registration No.TN 25 P 5050 driven by its driver in a rash and negligent manner came and dashed against the vehicle in which the injured was travelling which resulted in the injured suffering multiple grievous injuries and fractures for which the injured was admitted at the hospital at various points of time. Therefore, claiming compensation of Rs.15,00,000/- the claim petition has been filed.

3. Before the Tribunal, the claimant examined herself as P.W.1 and marked Ex.P.1 to Ex.P.14. No witnesses were examined nor any



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documents were marked on the side of the respondents and the Court Document Ex.C.1 and C2 have been marked by the Tribunal. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.8,35,520/- as compensation to the claimant. Challenging the same, the appellant/claimant is before this Court.

4. The learned counsel for the claimant submits that the compensation awarded under various heads is on the lower side and it requires enhancement. It is the further submission that though the disability has been fixed at 46% by the medical board and multiplier method has been rightly adopted however no compensation has been awarded under the head “future prospects”. Similarly no compensation has been awarded towards the future medical treatment inspite of the fact that the medical board has opined that the claimant may require future medical treatment. The compensation under the various heads are very meagre and they require to be interfered with.

5. Per contra, learned counsel appearing for the second respondent/Insurance Company submitted that, taking into consideration



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all the relevant documents has rightly fixed the compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Though the first respondent was served none appeared on his behalf.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials placed on record.

8. There is no quarrel with the fact that the accident took place as stated in Ex.P.1 F.I.R that the auto which has been insured with the second respondent insurance company has been fastened with the liability towards rash and negligent driving and therefore, the second respondent was directed to compensate the claimant. The only issue is with regard to the quantum of compensation awarded by the Tribunal.



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9. The main ground on which the claimant submits that future prospects has not been taken into consideration. The disability certificate reveals that the claimant is assessed with permanent disability at 46%, the Tribunal without reducing the percentage of disability has accepted the percentage of disability. Though the claimant claims that he was earning a sum of Rs.20,000/- per month, however, no proof with regard to the receipt of salary was filed by the claimant and therefore adopting notional income of Rs.9,000/-, the loss of earning has been computed by adopting multiplier method. The loss of earning in the case of injury suffered by the person in the accident and inclusion of future prospects therein is with the discretion of the Court by taking into consideration the disability suffered.

10. In the case on hand, the Tribunal has accepted the disability assessed at 46% without any interference by fixing the notional income at Rs.9,000/-. There is no material to show that the earning capacity of the claimant would get badly affected. Thereby, she would not be able to earn any amount at the later point of time. In the case of award of



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compensation in injury cases, future prospects should be based on the nature of injuries suffered by the claimant and the difficulty that would arise for the claimant to earn the said amount.

11. In the case of on hand no material has been furnished to show that the disability would have an impact in the claimant not able to earn any amount. Therefore, the Tribunal has not included future prospects while computing the compensation. The approach adopted by Tribunal cannot be said to be erroneous and the decision of the Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680* cannot be applied with regard to the case relating to an injury in an accident. As in the said case fatal accidents were the issue which came up for consideration. Therefore, the decision of finding recorded by the Tribunal and compensation awarded are reasonable, justified and are liable to be confirmed. Accordingly, enhancement sought for cannot be granted.



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12. With the above observation, this Civil Miscellaneous Appeal is dismissed. No costs.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

To

1.The Motor Accident Claims Tribunal / the Special Sub Court,
Tiruvannamalai.

2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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