



C.M.A.Nos.778 and 2536 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.Nos.778 and 2536 of 2016

C.M.A.No.778 of 2016

The New India Assurance Co. Ltd
No.45, Moore Street, 5th floor
Chennai-600 001

.. Appellant

Vs.

1.S.Saraswathy

2.R.Baskaran

.. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.07.2015, made in M.C.O.P.No.3621 of 2011 on the file of Motor Accident Claims Tribunal (V Court of Small Causes) of Madras.



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C.M.A.Nos.778 and 2536 of 2016

For Appellant : Mr.R.Siva Kumar

For Respondents : Mr.UM.Ravichandran for R1

C.M.A.No.2536 of 2016

S.Saraswathy

.. Appellant

Vs.

1.R.Baskaran

2. The New India Assurance Co. Ltd
No.45, Moore Street, 5th floor
Chennai-600 001

.. Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.07.2015, made in M.C.O.P.No.3621 of 2011 on the file of V Judge, Small Causes Court (Before the Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.UM.Ravichandran

For Respondents : Mr.R.Siva Kumar for R2



C.M.A.Nos.778 and 2536 of 2016

COMMON JUDGMENT

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(Judgment of the Court was made by S.S.SUNDAR,J.)

These appeals are preferred as against the judgment and decree of Motor Accidents Claims Tribunal, Chennai viz., the V Judge, Court of Small Causes in M.C.O.P.No.3621 of 2011. Since both the appeals arise out of the same judgment and decree of the Tribunal, these appeals are disposed of by this common judgment.

2. The claimant viz., the injured victim in the accident is the appellant in C.M.A.No.2536 of 2016, whereas the insurance company against whom the award is passed is the appellant in C.M.A.No.778 of 2016.

3. Brief facts that are necessary for the disposal of these appeals are as follows:

On 27.07.2011, when the petitioner was standing by the side of P.T.Rajan Salai to cross the road near Sivan park in K.K.Nagar, Chennai, a car that was insured with the appellant in C.M.A.No.778 of 2016, hit the appellant in C.M.A.No.2536 of 2016, causing grievous injuries to her. Therefore, the injured victim preferred M.C.O.P.No.3621 of 2011 before



C.M.A.Nos.778 and 2536 of 2016

the Motor Accidents Claims Tribunal, Chennai, claiming a sum of Rs.70,45,000/-. However, the claim was restricted to Rs.50,00,000/-. The 2nd respondent before the Tribunal viz., the insurance company, appellant in C.M.A.No.778 of 2016 contested the claim mainly on the ground of negligence on the part of the claimant and on the ground of quantum.

4. Before the Tribunal, the claimant examined herself as P.W.1 and marked Exs.P.1 to P.34, apart from examining P.W.2. To P.W.6. On the side of the respondents, no witness was examined and no documents were marked.

5. Based on the evidence of the claimant and other witnesses, the Tribunal held that the claimant was drawing a sum of Rs.10,000/- as income being engaged herself as a professional dancer who used to perform in group dancing sequences in films. Based on the Doctors disability certificate at 75% and other evidence, the Tribunal fixed the compensation towards 'Loss of income' at Rs.3,37,500/- taking the permanent disability at 25%. Awarding a sum of Rs.83,500/- towards 'Medical Expenses', sum of Rs.10,000/- towards 'Attender Charges', a



C.M.A.Nos.778 and 2536 of 2016

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further sum of Rs.50,000/- towards 'Transportation and Nourishment' and on other heads arrived at a sum of Rs.7,78,000/- as compensation payable to the claimant. Aggrieved by the same, the insurance company has preferred an appeal in C.M.A.No.778 of 2016 and the claimant has preferred C.M.A.No.2536 of 2016.

6. The counsel appearing for the insurance company submitted that the claimant has not even proved by sufficient document to show that she was a cine dancer and was earning a sum of Rs.10,000/-. Learned counsel then submitted that the assessment of disability by the Doctors who have examined the claimant cannot be believed and their version is contrary to the admitted facts. Learned counsel also submitted that loss of earning power cannot be based on a presumption that the monthly income of the claimant was Rs.10,000/- from professional engagement, especially when her age was 35 years. Learned counsel also submitted that the Tribunal has not considered the evidence available on record before holding that the claimant is entitled to the sum as awarded by the Tribunal under various heads.



C.M.A.Nos.778 and 2536 of 2016

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7. Learned counsel appearing for the claimant however submitted that the income of the claimant has been taken at Rs.7,500/- per month even though there is no evidence contrary to the evidence adduced by the claimant herself. Pointing out that evidence of P.W.1 is supported by P.W.3 and P.W.6, learned counsel submitted that the claimant was drawing not less than Rs.20,000/- per month and that therefore the loss of income should be determined by taking into account the monthly income as Rs.20,000/-. Learned counsel then submitted that the claimant is also entitled to compensation towards further 'medical expenses' as she had to undergo another surgery to remove the plates which were implanted earlier. Learned counsel then submitted that claimant has lost vision completely in one eye and more than 40% in the other eye and she could not perform dances or continue her profession as a teacher and hence, the Tribunal is not right in granting compensation on the basis that her disability is just 25%.

8. Though several submissions were made by the counsel on either side, this Court finds that on appreciation of evidence, the finding regarding liability and negligence are unassailable and therefore the appeal



C.M.A.Nos.778 and 2536 of 2016

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filed by the insurance company in C.M.A.No.778 of 2016, cannot be entertained especially when the counsel appearing for the insurance company has not pointed out any material to show that the claimant is not entitled to compensation under any of the heads indicated in the award of the Tribunal.

9. As regards the appeal in C.M.A.No.2536 of 2016, the claimant has examined six witnesses including herself as P.W.1. From the cross examination of P.W.1/claimant, this Court is unable to find any specific suggestion put to the witness disputing the cause for the claimant's vision impairment. The evidence of P.W.1 clearly indicate that the claimant has suffered multiple fractures in her limbs and legs and the free movement of her limbs has been reduced due to the surgeries and the plates implanted. P.W.4- Doctor, who is also an ophthalmologist under whom the claimant was undergoing treatment for Post Traumatic Optic Atrophy has stated that in view of the injury caused to a part of her brain, the claimant has lost her vision completely in one eye even though there is no injury in her eyes. The fact that the claimant lost her vision in the right eye is not questioned during cross examination. Even though different suggestions were put to



C.M.A.Nos.778 and 2536 of 2016

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the witnesses, a specific suggestion is put regarding the possibility of the claimant losing vision on her right eye due to any other reasons than the one given by Medical Expert. This Court accepts the finding that the claimant is a professional dancer as this Court believes the statement of other witnesses regarding her profession. As regards the nature of job, the claimant was supposed to perform as dancer. Hence, this Court finds that the claimant is now physically disabled, incompetent and cannot earn any money by continuing her profession. The functional disability can be taken as 100%. Since the disability for the purpose of assessing income on account of accident caused to the claimant is 100%, we hold that the claimant who is incompetent to earn anything by continuing her profession is entitled to compensation on the basis of her monthly income.

10. Though the Tribunal has arrived at a sum of Rs.10,000/- towards monthly income, the Tribunal has taken erroneously accept deduction and fixed the income of the claimant as Rs.7,500/- per month while calculating the loss of income. Though the claimant stated that she was earning between Rs.20,000/- to Rs.25,000/- per month as a professional dancer and a further sum of Rs.7,500/- per month by taking classes to the dancers, this



C.M.A.Nos.778 and 2536 of 2016

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Court is unable to believe the evidence of some of the witnesses who have spoken about her employment in a dance school. Considering the fact that claimant may not be engaged everyday, the income of claimant at Rs.10,000/- as arrived by the Tribunal need not be interfered with. Taking into account the income of the claimant at Rs.10,000/ the claimant is entitled to a sum of Rs.18,00,000/- towards 'Loss of income'. Though the Tribunal has awarded only a sum of Rs.10,000/- towards 'Attender charges', this Court finds that a sum of Rs.3,00,000/- can be awarded towards attender charges. Though the Tribunal has admitted ' Medical expenses' to the tune of Rs.83,500/-, we are inclined to award a sum of Rs.2,00,000/- towards future medical expenses. Since, we have awarded compensation by adopting multiplier, it is not necessary that the claimant should be given any other amount towards disability. Therefore, a sum of Rs.1,77,000/- granted by Tribunal cannot be sustained. It is admitted that the claimant was taking treatment for a substantial period and therefore a sum of Rs.45,000/- should be enhanced to Rs.60,000/- towards ' Loss of earning during the treatment period'. The claimant is entitled to a sum of Rs.50,000/- towards Transportation,Nourishment and other expenditures and another Rs.25,000/- towards 'Loss of Amenities'. As regards 'Pain and



C.M.A.Nos.778 and 2536 of 2016

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suffering', this Court having regard to nature of injury suffered by the claimant is inclined to grant a sum of Rs.2,00,000/- towards 'Pain and suffering'. Therefore, total compensation payable to the claimant is a sum of Rs.27,18,500/-.

11. The claimant is also entitled to interest at 7.5% as granted by the Tribunal. Accordingly, the Appeal in C.M.A.No.778 of 2016 is dismissed. Whereas, the Appeal in C.M.A.No.2536 of 2016 is partly allowed and the judgment and decree of the Tribunal dated 20.07.2015 is modified by enhancing the compensation to Rs.27,18,500/- and the claimant is also entitled to 7.5% interest from the date of petition till the date of deposit. It is now reported by the insurance company that the insurance company, the appellant in C.M.A.No.778 of 2016 has deposited 50% of the amount as awarded by the Tribunal, the balance shall be deposited within a period of 12 weeks from the date of receipt of a copy of this judgment. No costs.

(S.S.S.R.J) & (P.B.B.J)

14.03.2023

Internet : Yes

Neutral Citation: Yes/No



C.M.A.Nos.778 and 2536 of 2016

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To

1. The II Additional District Judge,
Tindivanam

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



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C.M.A.Nos.778 and 2536 of 2016

S.S.SUNDAR, J.,
and
P.B.BALAJI, J

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C.M.A.Nos.778 and 2536 of 2016

14.03.2023