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C.M.A.No.425 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.425 of 2022

Lakshmi

.. Appellant

Vs.

1.Alagarsan
2.United India Insurance Company Ltd.,
Oriental Theatre Complex,
77, Aranachala Asari Street,
Salem - 636 001.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 06.01.2020 in M.C.O.P.No.810 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.R.Navaneetha Krishnan

For Respondents

For R1 : No appearance

For R2 : M/s. I.Malar



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J U D G M E N T

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The Appeal has been filed against the Judgment and Decree dated 06.01.2020 made in M.C.O.P.No.810 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri. The claimant has preferred the above appeal, aggrieved by the quantum of compensation awarded by the Tribunal.

2. The claimant filed the claim petition before the Tribunal stating that on 07.05.2011 at about 7.30 P.M., while she was walking on the left hand side of the Ayodhyapattinam-Pelur road, the Two wheeler bearing Regn.No.TN-54-3586 ridden by the 1st respondent came from behind and hit her; that because of the same, she had suffered grievous injuries in the hand, leg, shoulder and chest that she took treatment in a Private Hospital. Thus, she was entitled to compensation of Rs.5,00,000/-.

3. The 1st respondent/rider of the offending vehicle remained exparte before the Tribunal.



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4. The 2nd respondent filed counter affidavit denying the averments made in the claim petition. The 2nd respondent further stated that the complaint about the alleged accident was given seven days after the accident and hence, it cannot be said that the injuries sustained by the claimant were due to the accident.

5. The claimant examined two witnesses on her side and Ex.P1 to Ex.P10 were marked and on the side of the Court, the Disability Certificate and X-Ray were marked as Ex.C1 and Ex.C2.

6. The Tribunal after considering oral and documentary evidence held that the claimant was entitled to total compensation of Rs.80,000/- (Rupees Eighty Thousand only).

7. The learned counsel for the appellant submitted that the claimant had produced the Disability Certificate issued by the Medical Board assessing the permanent disability of the claimant at 20%. However, without any basis, the Tribunal had rejected the said certificate and held that no



compensation can be awarded under the head loss of earning. The learned counsel for the appellant further submitted that the Tribunal ought to have atleast adopted the percentage method to award compensation in addition to the compensation awarded. The learned counsel for the appellant further submitted that the claimant/appellant was unable to pursue her normal activities for five months and the Tribunal therefore, ought to have fixed the notional income and awarded compensation under the head loss of income for five months.

8. Per contra, the learned counsel for the 2nd respondent / Insurance Company submitted that the Tribunal had rightly fixed the compensation and there is no reason to interfere with the award. He further submitted that the very version of the claimant/appellant that she sustained injuries due to the act of the 1st respondent is doubtful since the complaint was given seven days after the alleged accident.

9. Though the learned counsel for the respondent submitted that the claim of the appellant ought not to have been accepted by the Tribunal since



the version in the claim petition is doubtful on account of the delay in filing the complaint, this Court finds that the Tribunal after taking into consideration the oral and documentary evidence found that the appellant sustained injuries only due to the accident. The Insurance Company has not challenged the said finding. In such circumstances, the finding of the Tribunal as regards the liability need not be interfered with.

10. This Court, on perusal of the documents and on hearing the submissions of the learned counsel on either side finds that admittedly the Disability Certificate/Ex.C1 issued by the Medical Board assessed the disability at 20% and the nature of disability is permanent. This Court is of the view that the Tribunal ought to have awarded compensation by adopting the percentage method. Since the accident is of the year 2011, the Tribunal ought to have awarded Rs.3000/- per percentage and totally Rs.60,000/- under the head disability. That apart, this Court also finds that the Tribunal had not taken into consideration the loss of income of the appellant during the period of treatment. This Court considering the nature of injuries suffered and the Ex.C1/the Disability Certificate is of the view that the



claimant is entitled to get compensation under the head loss of income for a period of three months. The appellant has claimed that she was earning Rs.6000/- per month in the claim petition and the same is accepted. Therefore, the compensation awarded under the head loss of income has to be Rs.18,000/- (6000x3). Hence, compensation of Rs.60,000/- under the head disability and Rs.18,000/- under the head loss of income can be added to the sum of Rs.80,000/- already awarded by the Tribunal. Thus, the compensation awarded by the Tribunal is modified as follows:

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1.	Disability		60,000	Granted
2.	Loss of income		18,000	Granted
3.	Medical expenses	30,000	30,000	Confirmed
4.	Pain and suffering	15,000	15,000	Confirmed
5.	Transportation	5000	5000	Confirmed
6.	Extra nourishment	10,000	10,000	Confirmed
7.	Future medical expenses	15,000	15,000	Confirmed
8.	Damages to cloths	5000	5000	Confirmed
	Total	Rs.80,000/-	Rs.1,58,000/-	



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11. In the result,

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(i) This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.80,000/- is hereby enhanced to Rs.1,58,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(ii) The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation.

(iii) The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court i.e., Rs.1,58,000/- 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.

(iv) On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

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Internet:yes/no
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SUNDER MOHAN.J.,

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To

The Presiding Officer,
Motor Accident Claims Tribunal,
Subordinate Court,
Sankagiri.

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