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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2023

Coram

The Honourable Mr.Justice SUNDER MOHAN

C.M.A.No.1077 of 2022

Patakam Hemalatha

...Appellant

Versus

1.K.Praveen Babu

2.ICICI Lombard General Insurance Co. Ltd.,

First Floor, Arihant Plaza,

Nos.84 & 85, Wall Tax Road,

Chennai – 600 003.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25.10.2021 passed by the Special Court II (Motor Accidents Claims Tribunal), Chennai in M.A.C.T.O.P.No.5322 of 2016.

For Appellant : Mr.R.Kalai Arasan

For Respondent – 1 : No Appearance

For Respondent – 2 : Mr.M.Jeyaraj



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant seeking to enhance the compensation awarded by the Special Court II (Motor Accidents Claims Tribunal), Chennai in M.A.C.T.O.P.No.5322 of 2016 vide judgment and decree dated 25.10.2021.

2. The brief facts of the case are as follows:

On 04.05.2016, at about 9.30 a.m., when the appellant/claimant was crossing the Rajiv Gandhi Salai near IGP Company, Kandan Chavadi from west to east direction at pedestrian cross, a motorcycle bearing Registration No.TN 22 DB 2104 belonging to the 1st respondent, driven by its driver coming from south to north direction in the said Rajiv Gandhi Salai, hit the appellant/claimant, thereby, the accident had occurred. In the accident, the appellant/claimant had sustained severe injuries. Hence, the appellant/claimant had filed a claim petition in M.A.C.T.O.P.No.5322 of 2016 against the 1st respondent (owner of the offending vehicle) and 2nd respondent (insurer of the offending vehicle), claiming a sum of Rs.60,00,000/- as compensation for the severe injuries sustained by her in the accident.



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3. The 2nd respondent/Insurance Company (insurer of the offending vehicle) had filed its counter statement denying all the averments made by the appellant/claimant in the Claim Petition. In the counter statement, it is stated that there was no negligence on the part of the driver of 1st respondent's motorcycle; the appellant/claimant who crossed the road suddenly on the wrong side had invited the accident and hence, the 2nd respondent/Insurance Company is not liable to pay any compensation on behalf of the 1st respondent. It is further stated that the driver who rode the 1st respondent's motorcycle was not holding a valid driving license at the time of accident, despite which, the 1st respondent had handed over the motorcycle to him and thereby, the 1st respondent had willfully violated the terms and conditions of the policy and hence, the claim petition is liable to be dismissed.

4. Before the Tribunal, on the side of the claimant, in order to prove the averments in the claim petition, appellant/claimant examined herself as P.W.1 and marked 21 documents as Exs.P1 to P21. On the side of the respondents, no witness was examined and no document was marked. One Court document viz., Disability Certificate issued by the Regional Medical Board, Government Royapettah Hospital, Chennai was marked as Ex.C1.



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5. On appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the conclusion that the accident had occurred due to the rash and negligent driving of the driver who rode the 1st respondent's motorcycle and hence, being the insurer of 1st respondent's motorcycle, the 2nd respondent/Insurance Company is liable to pay the compensation to the appellant/claimant. Accordingly, the Tribunal directed the 2nd respondent/Insurance Company to pay a sum of Rs.10,61,200/- as compensation with cost and interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization, to the appellant/claimant.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred the present appeal before this Court.

7. Mr.R.Kalai Arasan, learned counsel for the appellant/claimant submitted that the compensation awarded by the Tribunal is meagre, particularly, the amount of Rs.50,000/- awarded by the Tribunal under the head, 'Disability' is on the lower side. He also submitted that in the accident, the appellant/claimant had sustained several injuries viz., fracture



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in both legs, fracture in spinal cord, fracture in elbow and fracture in hip region, etc., as a result of which, she is suffered from functional disability and she lost her earning power; though the Regional Medical Board, Government Royapettah Hospital, Chennai had assessed the disability of appellant/claimant as 10%, subsequent to the order of this Court, it had examined the appellant/claimant once again and issued the Disability Certificate dated 17.02.2023 stating that due to the injuries sustained by the appellant/claimant in the accident, she is affected from 70% permanent locomotor disability. Therefore, the learned counsel prayed this Court to consider the Disability Certificate dated 17.02.2023 issued by the Regional Medical Board, Government Royapettah Hospital, Chennai and enhance the amount awarded by the Tribunal towards, 'Disability'.

7.1. Further, the learned counsel submitted that the appellant/claimant was treated as in-patient in the Hospital for nearly 20 days in two spells i.e., from 04.05.2016 to 21.05.2016 (18 days) and from 05.10.2016 to 06.10.2016 (2 days); but, without considering the this aspect, the Tribunal had awarded a meagre amount of Rs.20,000/- under the head, 'Loss of Earnings'; similarly, the amount awarded under the head, 'Attender Charges' is also meagre. He also submitted that though the appellant/claimant had



marked Ex.P12 before the Tribunal, to establish the fact that the plate and screws which were fixed in her leg to be removed in future; the Tribunal did not award any compensation under the head, 'Future Medical Expenses'. Hence, the learned counsel prayed this Court to award a just and reasonable compensation towards the head, 'Future Medical Expenses'.

8. Though the 1st respondent remained *ex-parte* before the Tribunal, this Court issued notice to him. Thereafter, the 1st respondent had entered appearance through his counsel. However, today, none appeared on behalf of the 1st respondent.

9. Mr.M.Jeyaraj, learned counsel appearing for the 2nd respondent/Insurance Company submitted that the compensation awarded by the Tribunal is just and reasonable and hence, the same need not to be enhanced. He further submitted that though the appellant/claimant had stated in the claim petition that she is not able to do her regular work because of the injuries sustained by her in the accident, she did not produce any documentary evidence before the Tribunal to prove that she is affected from functional disability and due to which, she lost her earning power; and hence, the Tribunal had awarded Rs.50,000/- towards the head, 'Disability'



and Rs.20,000/- towards the head, 'Loss of Earning'. He also submitted that the amount awarded by the Tribunal towards all other heads are also just and reasonable and hence, this appeal is liable to be dismissed.

10. Heard the learned counsel for appellant/claimant & the learned counsel appearing for 2nd respondent/Insurance Company and perused the materials available on record.

11. Now, the only issue to be decided in this case is that whether the quantum of compensation awarded by the Tribunal is just and reasonable?

12. From a perusal of the records, it is seen that in Ex.C1, the Regional Medical Board, Government Royapettah Hospital, Chennai had assessed the disability of appellant/claimant as 10%. However, subsequent to the admission of this appeal, this Court vide order dated 13.12.2022, directed the appellant/claimant to appear before the Regional Medical Board, Government Royapettah Hospital, Chennai for medical examination. Pursuant to the said order of this Court, the Regional Medical Board, Government Royapettah Hospital, Chennai had once again examined the appellant/claimant and issued the Disability Certificate dated 17.02.2023



stating that the appellant/claimant suffered from 70% permanent locomotor disability. Considering the nature of injuries sustained by the appellant i.e., fracture in both legs, fracture in spinal cord, fracture in elbow and fracture in hip region, etc., this Court is of the view that the appellant had certainly suffered functional disability and the functional disability can be fixed at 25%. Though the appellant had marked pay slip to show that she was earning Rs.20,000/- per month in a private concern, this Court is of the view that the Tribunal was right in fixing the notional income as the employer was not examined. However, considering the year of the accident, age, educational qualification and the avocation of the appellant, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.15,000/- per month. Hence, the compensation under the head 'Loss of Earning Capacity' has to be calculated as follows:

$$\text{Rs.15,000} \times 25/100 \times 12 \times 17 = \text{Rs.7,65,000/-}$$

13. It is to be noted that in the present case, the appellant/claimant was taking treatment as in-patient in the Hospital for nearly 20 days, but, the Tribunal had not awarded any compensation for the said treatment period. Hence, considering the treatment period of appellant/claimant, this Court awards Rs.20,000/- under the head, 'Loss of Amenities of Life'. It is also to



be noted that the appellant/claimant had stated in her deposition that the plate and screws which were fixed in her leg have to be removed in future and to prove the same, she had marked the Future Medical Expenses Certificate issued by Helios Hospital as Ex.P12 before the Tribunal, however, the Tribunal had not awarded any compensation under the head, 'Future Medical Expenses'. Therefore, this Court is of the opinion that it would be just and appropriate to award Rs.40,000/- under the head, 'Future Medical Expenses'. Further, it seems that the amount awarded by the Tribunal towards the head, 'Attender Charges' is on the lower side and hence, this Court enhances the 'Attender Charges' as Rs.15,000/-.

14. The compensation awarded by the Tribunal towards all other heads are just and reasonable and hence, the same are confirmed. The break-up details of the enhanced compensation are as follows:

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted
1	Disability	Rs.50,000/-	---	Deleted
2	Pain & Sufferings	Rs.40,000/-	Rs.40,000/-	Confirmed
3	Transportation	Rs.7,000/-	Rs.7,000/-	Confirmed
4	Medical Expenses	Rs.9,28,195/-	Rs.9,28,195/-	Confirmed
5	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed



Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award Confirmed or Enhanced or Granted
6	Attender Charges	Rs.6,000/-	Rs.15,000/-	Enhanced
7	Loss of Earnings	Rs.20,000/-	---	Deleted
8	Loss of Earning Capacity	---	Rs.7,65,000/-	Granted
9	Loss of Amenities of Life	---	Rs.20,000/-	Granted
10	Future Medical Expenses	---	Rs.40,000/-	Granted
Total		Rs.10,61,195/-	Rs.18,25,195/-	---
Rounded Off		Rs.10,61,200/-	Rs.18,25,200/-	Enhanced by Rs.7,64,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.10,61,200/- awarded by the Tribunal is enhanced to Rs.18,25,200/- (Rupees Eighteen Lakhs Twenty Five Thousand and Two Hundred only). The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.18,25,200/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any), to the credit of M.A.C.T.O.P.No.5322 of 2016, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount along with proportionate interest and cost. The appellant/claimant is directed to pay the necessary Court fee, if any, on the



enhanced award amount, before receiving the copy of this judgment. No costs.

01.08.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Special Court II (Motor Accidents Claims Tribunal),
Chennai.
- 2.The Section Officer,
Vernacular Records Section,
High Court, Madras.



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SUNDER MOHAN, J.

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