



C.M.A. No. 1876 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2023

Pronounced on : 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1876 of 2018

Kumari

... Appellant

Vs.

1. R. Vaidyanathan

2. The New India Assurance Co. Ltd.,
Madurai Branch,
No.34, Alagar Koil Road,
Thallakulam,
Madurai - 625 032.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 07.10.2017 passed in M.C.O.P. No. 973 of 2013 on the file of the Motor Accident Claims Tribunal, the III Additional District Judge, Poonamallee.

For Appellants : Mr. K. Varadha Kamaraj

For R1 : Ex-Parte

For R2 : Mr. J. Chandran



WEB COPY



C.M.A. No. 1876 of 2018

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation awarded in M.C.O.P.No.973 of 2013, dated 07.10.2017, on the file of the Motor Accident Claims Tribunal, Poonamallee.

2. For the sake of convenience, the parties are referred herein according to their litigative status and ranking before the Tribunal.

3. This appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal under following heads such as, loss of earning power, disability, loss of future prospectus, amenities, nourishments, transport and attender charges.

4. On 21.08.2013 at about 9:30 hours while she was standing at Chinnkolam-Pakkam village, opposite to Karpaga Vinayagar Medical College, Maduranthagam Taluk, GST Road, a lorry bearing Registration No. TN-37-BD-6761 was driven by its driver in rash and negligent manner and hit on the claimant and thereby, caused the accident. Due to this accident,



C.M.A. No. 1876 of 2018

the claimant has sustained grievous injuries with multiple fractures hence filed claim petition seeking compensation for a sum of Rs.16,00,000/- .

5. The offending lorry belongs to the first respondent was insured with the second respondent-insurance company. The first respondent has not contested the claim before the Tribunal and was remained Ex-parte. The second respondent has contested the claim, contending that the first respondent's lorry driver has driven the vehicle with moderate speed with observing traffic rules and regulations, at that time, a car, driven by its driver in high speed and suddenly cut across the road at Karpaga Vinayaga College gate junction and hit against the first respondent lorry due to which, the lorry hit the side wall. Further, contented that the above said car is responsible for the accident and hence, the second respondent is not liable to pay compensation to the claimant and prays to dismiss the claim petition.

6. Based on the evidences placed on record, the Tribunal in Point No.1, has held that the driver of the first respondent lorry is responsible for the accident. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.5,71,250/-as compensation to the claimant. In



Point No.3, the second respondent as the insurer of the offending vehicle, which belongs to the first respondent is liable to pay the compensation to the claimant.

7. Aggrieved over the award of the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

8. The learned counsel for the claimant submitted that the Tribunal has failed to consider the loss of earning power of claimant due to the injuries sustained by him. He has also contended that future prospectus was not awarded by the Tribunal and also the compensation awarded under various other heads are also on the lower side hence prays to enhance the compensation.

9. The learned counsel for the Insurance company has contended that the Tribunal based on the evidences placed on record, has rightly fixed the loss of income considering the age of the claimant and the disability is also assessed properly by the Tribunal and opposed to revise or enhance the compensation awarded by the Tribunal.



WEB COPY 10. I have heard the submissions of the learned counsel on both sides and also perused the materials placed on record.

11. The claimant herein is aged about 38 years, she has sustained injuries while she was standing in the road due to knock down by a driver of the lorry. She was admitted in to the hospital on 21.08.2023, where she was diagnosed that, fracture on her right thigh and back side bone, right bone, foot, first, third, fourth and fifth fingers were amputated and thereafter, she has undergone in-patient treatment from 21.08.2013 to 01.10.2013. Ex.P4 shows that the injured was once again admitted in to the hospital on 30.04.2014 till 13.06.2014, she has sustained amputation on first, third, fourth and fifth fingers on the right foot, fracture on the right leg femur. Both Discharge Summaries were issued by the Rajiv Gandhi Government General Hospital, Chennai. Ex.P11 is the Disability Certificate issued by the Chief Civil Surgeon of Government Peripheral Hospital, K.K. Nagar, which shows that the disability has been assessed as 60% of permanent physical disability.



WEB COPY 12. There is no evidence to show the prior avocation of the claimant. However, considering the claimant as a manual labourer and her disability and more particularly, loss of limb i.e., foot and fracture on 9th Spinal as well as in right leg femur, must have reduced the earning capacity of the claimant to a great extent. This Court is of the view that the disability of 60% assessed by the Chief Civil Surgeon of Government Peripheral Hospital is proper. The claimant is a lady and due to the above injuries sustained by her, she has been restricted to carry out her regular work at home and also her contribution to the development of her family. Hence, this Court finds that 60% loss of earning capacity would be appropriate as per the Disability Certificate/Ex.P11 and so, 50% loss of earning capacity fixed by the Tribunal is modified to 60%. Considering the age of the claimant the appropriate multiplier is '15' as per the Judgment of the Hon'ble Supreme Court in *Sarla Verma and Others vs. Delhi Transport Corporation and Another* [2009 (2) TNMAC 1 SC : 2009 (6) SCC 121] and income is fixed as Rs.9,000/- per month accordingly a sum of Rs.9,72,000/- [9000 x 12 x 15 x 60%] is arrived under the caption loss of income.



WEB COPY

13. The Tribunal has not awarded any compensation towards future prospectus to the claimant. Considering the judgments of the Hon'ble Apex Court in *Jagdish vs. Mohan and Others [(2018) 4 SCC 571]* and *Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 INSC 466 SC Website]*, this Court is of the view that the claimant is entitled to 40% future prospectus i.e., Rs.3,88,800/- [972000 x 40%]. The Tribunal has awarded attender charges as Rs.250/- per day since, the claimant was admitted as in-patient for 86 days i.e., from 21.08.2013 to 01.10.2013 and from 30.04.2014 till 13.06.2014, wherein, the Tribunal has fixed the same as Rs.23,500/-, which is a calculation error, accordingly, the same is rectified to Rs.21,500/-.

14. The Tribunal has not awarded compensation under the head loss of amenities, hence, this Court is inclined to award a sum of Rs.50,000/- under the head loss of amenities. The Tribunal has awarded Rs.5,000/- towards extra nourishment, considering the nature of injuries, this Court is inclined to enhance the same to Rs.20,000/-. As far as the compensation awarded by the Tribunal under various other heads are concerned, the same



C.M.A. No. 1876 of 2018

are just and reasonable and the same are hereby confirmed.

WEB COPY

15. Thus the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	4,50,000/-	9,72,000/-	Enhanced
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Attenders Charges	23,250/-	21,500/-	Reduced
4.	Medical Expenses	8,000/-	8,000/-	Confirmed
5.	Pain and suffering	75,000/-	75,000/-	Confirmed
6.	Extra Nourishment	5,000/-	20,000/-	Enhanced
7.	Loss of Amenities	---	50,000/-	Granted
8.	Future Prospectus	---	3,88,000/-	Granted
	Total	5,71,250/-	15,44,500/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,71,250/- is hereby enhanced to **Rs.15,44,500/- [Rupees Fifteen Lakhs Forty Four Thousand and Five Hundred only]** together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award



C.M.A. No. 1876 of 2018

amount now determined by this Court 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, to the credit of M.C.O.P.No.973 of 20013 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. Since this Court has enhanced the compensation, the appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs.

12.09.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



WEB COPY



C.M.A. No. 1876 of 2018

K. RAJASEKAR,J.

stn

To:

1. The III Additional District Judge,
Motor Accident Claims Tribunal,
Poonamallee.
2. The Section Officer,
V.R. Section,
High Court, Chennai.

C.M.A. No. 1876 of 2018

12.09.2023