



C.M.A.No.1590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1590 of 2023

K. Sengeni

... Appellant

Vs.

1.A. Stella Mary

2.United India Insurance Co.Ltd.,
Motor Third Party Claims-Hub
Silingi Buildings, No.134, Greams Road,
Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2022 made in MCOP.No.7189 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Ms. P.T. Saleem Fathima

For Respondents : R1 – Ex parte
Mr. P. Sankara Narayanan, for R2



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 11.07.2022, made in M.A.C.T.O.P. No.7189 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court – II, Small Causes Court, Chennai.

2. The appellant filed M.A.C.T.O.P. No. 7189 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court – II, Small Causes Court, Chennai, claiming a sum of Rs.45,00,000/- as compensation for the injuries sustained by her in the accident that took place on 11.10.2018.

3. According to the appellant, on the date of accident, i.e. 11.10.2018 after crossing the Poonamalle High Road, from North to South opposite to Pullapuram and when she was walking on the southern side of the road, the rider of the motorcycle bearing Registration No.TN-20-CM-9922, rode the same in a rash and negligent manner endangering to the public safety and dashed against the appellant and caused the accident. In



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the above said accident, the appellant sustained grievous injuries and hence, filed claim petition claiming compensation against the respondents.

4. The 1st respondent remained *ex-parte* before the Tribunal. Since R1 remained ex parte before the Tribunal, the learned counsel for the appellant prayed for dispense with notice to R1.

5. The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition including the involvement of the vehicle stating the the petition is bad for non-joinder of necessary parties; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined herself as PW1 and six documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondent, no witness was examined but marked a document Ex.R1. Disability certificate issued by Medical Board was marked as Ex.C1 Court document.



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7. The Tribunal, considering the evidence and documents filed on the side of the appellant, held that the accident occurred due to the rash and negligent riding of the motorcyclist and directed the second respondent to pay a sum of Rs.2,12,200/- as compensation to the appellant at the first instance and recover the same from the first respondent.

8. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that the appellant had suffered injuries and the Medical Board had assessed the disability as 24% permanent disability. The appellant was working as a housemaid. The Tribunal without considering the avocation had erroneously held that functional disability has not been proved and adopted the percentage method to award compensation. The learned counsel further submitted that the compensation was not awarded under the Loss of amenities and the compensation under the head Transportation is meagre and therefore, the learned counsel prayed for enhancement of compensation.



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10. The learned counsel for the second respondent per contra submitted that the Tribunal, in the absence of any proof to show that the appellant suffered functional disability had rightly adopted the percentage method to award compensation. The compensation is just and reasonable and no interference is called for. Hence, prayed for dismissal of the appeal.

11. The only question involved in this appeal is-

Whether the compensation awarded by the Tribunal is just and reasonable?

12. Admittedly, the appellant was examined by the Medical Board and Ex.C1 disability certificate shows that she had suffered 24% permanent disability. The nature of injuries are also mentioned in Ex.P3 discharge summary which is extracted in the judgment of the Tribunal which is as follows:- "*Acetabulum fracture, IPR Fracture Left Side*". It is also stated that the injuries are grievous in nature. This Court, considering the nature of injuries and the avocation of the appellant as spoken to by her, is of the view that the appellant would have certainly suffered functional disability. Considering the nature of injuries and the period of treatment namely that she was in the hospital for nearly 34 days and the avocation of the appellant,



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this Court is of the view that the functional disability can be fixed as 15%.

The Tribunal had fixed Rs.11,000/- per month as notional income for the appellant which is just and reasonable. Hence, the appellant is entitled to compensation under the head disability in the following manner:-

$$11,000+2,750/-(11,000 \times 25\%) \times 12 \times 13 \times 15/100 = 3,21,750/-.$$

No amount was awarded towards loss of amenities by the Tribunal. Therefore, a sum of Rs.20,000/- is awarded towards loss of amenities. The Tribunal has awarded a sum of Rs.4000/- towards transportation and the same is enhanced to Rs.10,000/-. The award under the other heads are just and reasonable and hence, they are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,12,200/- to Rs.4,39,950/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,20,000/-	3,21,750/-	Enhanced
2.	Pain and suffering	35,000/-	35,000/-	Confirmed
3.	Transportation	4,000/-	10,000/-	Enhanced
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Attender charges	10,200/-	10,200/-	Confirmed
6.	Loss of earnings	33,000/-	33,000/-	Confirmed



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7.	Loss of amenities	-	20,000/-	Granted
	Total	2,12,200/-	4,39,950/-	Enhanced by Rs.2,27,750/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,12,200/- is hereby enhanced to Rs.4,39,950/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment at the first instance and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
AT



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SUNDER MOHAN, J.

AT

To

1. The Motor Accident Claims Tribunal,
Special Sub Court – II, Small Causes Court, Chennai.

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

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