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CMA.No.4623 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Civil Miscellaneous Appeal No.4623 of 2019
and
CMP.No.26181 of 2019

The Branch Manager,
National Insurance Company Limited,
DOX, Hero Honda Vertical, 101-106 BMC House,
Connaught Place, New Delhi – 110 001. ... Appellant/respondent

-Vs-

1. Padmavathi
2. G.Kuppusamy
3. Venkatesh
4. The Branch Manager,
IFFCO Tokio General Insurance Co.Ltd.,
Thulasi Chambers, 3rd Floor,
No.185, T.V.Swamy Road,
R.S.Puram, Coimbatore – 641 002. ... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 22.03.2019 in MCOP.No.55 of 2015 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Hosur.

For Appellant : Mr.J.Chandran
For Respondent : Mr.C.Prabakaran [R1]
Mr.N.Somasundar [R4]



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JUDGMENT

WEB COPY This appeal is preferred against the judgment of the Motor Accident Claims Tribunal, (Additional District Judge), Hosur, passed in M.C.O.P.No.55 of 2015 on 22.03.2019.

2. The insurance company is the appellant herein. The first respondent suffered an accident on 16.03.2004. While the first respondent was travelling as a pillion rider in a Hero Pleasure Motorcycle bearing Registration No.TN-70-J-6575 from Mathigiri towards Andhivadi Check Post, the rider of the motorcycle was riding the motorcycle in a rash and negligent manner without minding the rules of the road and dashed against another motorcycle. Due to the said accident, the first respondent has sustained injuries. The first respondent being the Tailor, she had a sewing machine used to stitch ladies garments and do embroidery work and she was earning more than Rs.15,000/- per month. Hence, she claimed compensation of Rs.30,00,000/-.

3. Before the Tribunal, the claimant examined himself and 11 exhibits were marked. On the side of the respondents, one Sumathi was examined as RW1 and Ex.R1 (Complaint copy given by the petitioner) was marked.



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4. On consideration of materials before it, the Tribunal held that the rash and negligent driving of the vehicle insured with the appellant was the cause of the accident. Finding substance in the contention of the claimant that she was doing tailor work, the Tribunal placed her income at Rs.9,000/- p.m. Accepting the disability at 25%, the Tribunal under the head 'Future prospects' awarded a sum of Rs.2,45,700/-, under the head of pain and suffering Rs.1,00,000/- was awarded, under the head of discomfort, frustration and loss of social enjoyment Rs.50,000/- was awarded, under the head of Medical Bills, Rs.7,924/- was awarded, under the head of future medical expenses Rs.5,000/- was awarded, under the head of extra nutrition Rs.20,000/- was awarded, under the head of Transport Rs.25,000/- was awarded and under the head of Attender, charges Rs.50,000/- was awarded. The total sum of Rs.14,86,424/- was directed to be paid together with interest at 7.5% p.a.

5. Heard the learned counsel for the appellant insurance company and the learned counsel for the first respondent.

6. The contention of the learned counsel for the appellant is that there was no proof either of the earnings of the claimant nor that she was



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unable to continue her avocation as a result of the accident suffered by her. Learned counsel would further contend that there was no proof to show that the claimant is not able to do her future tailoring working, therefore, an amount of Rs.2,45,700/- under the head of future prospects has to be set aside.

7. On the other hand, learned counsel for the first respondent would submit that the Tribunal has arrived at the income of the claimant by taking into consideration that she was a Tailor by profession and had a own sewing machine.

8. In the facts of the present case, this Court finds that the award under the head 'earning capacity' and 'future prospects' is unwarranted. This Court also finds that the claimant is entitled for disability as per Ex.P11 - Disability Certificate and also towards loss of income for five months at Rs.45,000/- [9000 * 5]. The award under the other heads is hereby confirmed.

9. In the light of the said discussions, I deem it fit to modify the award of the Tribunal as follows:



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<i>S.No.</i>	<i>Particulars</i>	<i>Award of Tribunal</i>	<i>Enhanced amount</i>	
1.	Earning capacity	Rs. 9,82,800/-	Set aside	
2.	Transport charges	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3.	Nutrition charges	Rs. 20,000/-	Rs. 20,000/-	Confirmed
4.	Attender Charges	Rs. 50,000/-	Rs. 50,000/-	Confirmed
5.	Pain and Suffering	Rs. 1,00,000/-	Rs. 1,00,000/-	Confirmed
6.	Discomfort, Frustration, Social Enjoyment	Rs. 50,000/-	Rs. 50,000/-	Confirmed
7.	Medical Bills	Rs. 7,924/-	Rs. 7,924/-	Confirmed
8.	Future Medical Expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
9.	Future Prospects	Rs. 2,45,700/-	Set aside	
10.	Disability	Rs. Nil	Rs. 2,10,000/-	Granted
11.	Loss of income	Rs. Nil	Rs. 45,000/-	Granted
		Rs. 14,86,424/-	Rs. 5,12,924/-	

The said sum of Rs.5,12,924/- shall be payable together with interest at 7.5% p.a. from the date of petition.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation amount of Rs.14,86,424/- shall stand reduced to Rs.5,12,924/-. Consequently, the connected miscellaneous petition is closed. No costs.

11. It is represented that the entire amount as awarded by the Tribunal stands deposited by the appellant insurance company. The first



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respondent/claimant is at liberty to withdraw the sum as found payable in keeping with the present order on due application. The sum in excess shall be refunded to the appellant insurance company.

20.03.2023

mp

To
The Motor Accident Claims Tribunal
(Additional District Judge), Hosur.



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A.A.NAKKIRAN, J.

mp

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