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C.M.A.No.1004 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1004 of 2023

R.Parameswari

...Appellant/Petitioner

Vs.

1.K.Sundarapandiyan

2.P.Gokulanandhan

3.The New India Assurance Co. Ltd.,
Having Divisional Office – 720800,
Amman Complex, 1st Floor,
No.1360/A, EVN Road,
Erode – 638 011.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Award of the Motor Accident Claims Tribunal (Special District Court), Erode in M.C.O.P.No.57 of 2018 dated 08.04.2022.

For Appellant : Mrs.H.Kavitha for
Mr.S.Kaithamalai Kumaran
For Respondents : R1, R2 - Exparte
Mr.C.Johnson for R3.



C.M.A.No.1004 of 2023

J U D G M E N T

The above appeal has been filed by the appellant seeking enhancement of compensation.

2. The appellant had filed a claim petition stating that on 04.08.2017, at about 12.20 P.M., when she was travelling as a pillion rider in the bike bearing Reg.No.TN 86 A 6615 ridden by her husband, a lorry bearing Reg. No.TN 33 BF 3114 insured with the third respondent/Insurance Company came in a rash and negligent manner and dashed against the two wheeler. As a result of which, the appellant sustained grievous injuries in her left hand and hence, prayed for compensation.

3. The first and second respondents remained exparte before the Tribunal.

4. The third respondent/Insurance Company resisted the claim petition stating that the accident did not take place due to the negligent driving of the driver of the insured vehicle; that the claim made by the appellant in any case is excessive and prayed for dismissal of the claim petition.



C.M.A.No.1004 of 2023

5. The appellant examined herself as P.W.1 and the Doctors as P.W.2 and P.W.3 and marked eighteen documents as Exs.P.1 to P.18. The disability certificate issued by the Medical Board was marked as Ex.C1. The third respondent did not examine any witness or mark any document on their side.

6. The Tribunal after considering the evidence on record awarded a compensation of Rs.15,69,029/-.

7. The learned counsel for the appellant submitted that although the Medical Board assessed the injuries as 61% permanent disability, the Tribunal had fixed 50% functional disability without any basis. Considering the nature of injuries, the learned counsel submitted that Tribunal ought to have fixed the entire 61% as functional disability. The learned counsel further submitted that the notional income fixed by the Tribunal is also meagre and requires enhancement.

8. The first and second respondents remained exparte before the Tribunal. The learned counsel for the appellant had made an endorsement for



C.M.A.No.1004 of 2023

dispense with notice to the first and second respondents. Hence notice to the first and second respondents is dispense with.

9. The learned counsel for the third respondent, per contra, submitted that the Tribunal after considering the disability certificate issued by the Medical Board and the fact that the left hand was shortened by 5 centimetres, rightly fixed the functional disability as 50% and no interference is called for. The learned counsel therefore, prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the third respondent and perused the materials available on record.

11. On perusal of the records, it is seen that the appellant was examined by the Medical Board, which assessed the disability as 61% permanent disability. Ex.P8 is the discharge summary issued by the Hospital. The Tribunal had observed that the appellant's hand had been shortened by five centimetres. Considering Ex.C1/Disability Certificate and all the above facts, including that the appellant was working as a Tailor, this Court is of the



C.M.A.No.1004 of 2023

view that the appellant had suffered functional disability to the extent of 50%.

Thus, the assessment made by the Tribunal is just and reasonable and hence, no interference is called for.

12. The Tribunal had fixed the notional income of the appellant as Rs.8,000/-. The accident took place in the year 2017. Considering the avocation of the appellant, age and year of the accident, this Court is of the view that the notional income of the appellant can be fixed as Rs.12,000/- per month. The appellant who was aged 48 years, at the time of the accident is entitled to 25 % towards future prospects and the multiplier applicable is '13' in the facts and circumstances of this case. Thus, the compensation awarded under the head 50% functional disability is modified as follows:-

$$\text{Rs. } 12,000/- + 3,000 (25\% \times 12,000) \times 12 \times 13 \times 50/100 = 11,70,000/-$$

13. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the



C.M.A.No.1004 of 2023

compensation awarded by the Tribunal is enhanced from Rs.15,69,029/- to

Rs.19,59,029/-, 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.	Pain and Suffering	1,35,000/-	1,35,000/-	Confirmed
2.	Attender Charges	30,000/-	30,000/-	Confirmed
3.	Extra Nourishments	20,000/-	20,000/-	Confirmed
4.	Transportation Expenses	20,000/-	20,000/-	Confirmed
5.	Towards 50% Functional Disability	7,80,000/-	11,70,000/-	Enhanced
6.	Loss of Income during treatment period	40,000/-	40,000/-	Confirmed
7.	Medical Expenses	4,44,029/-	4,44,029/-	Confirmed
8.	Loss of Amenities	1,00,000/-	1,00,000/-	Confirmed
	Total	15,69,029/-	19,59,029/-	Enhanced by Rs.3,90,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,69,029/- is hereby enhanced to Rs.19,59,029/- together with interest at



C.M.A.No.1004 of 2023

the rate of 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The third 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 six (6) weeks from the date of receipt of a copy of this Judgment. 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.

11.09.2023

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Index: Yes/No

Neutral Citation: Yes / No

To

1. The Special District Court,
Motor Accident Claims Tribunal
Erode.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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C.M.A.No.1004 of 2023

SUNDER MOHAN, J

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C.M.A. No. 1004 of 2023

11.09.2023