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C.M.A.No.1984 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1984 of 2020

Eswari

... Appellant

Vs.

1.Ramesh
2.Susaritha

3.ICICI Lombard General Insurance Company Limited,
Rep. by its Branch Manager,
No.414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi, Mumbai – 400 025.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and to enhance the amount awarded in M.C.O.P.No.163 of 2016 dated 03.01.2020 on the file of Motor Accidents Claims Tribunal, (Sub Court) Karaikal.

For Appellant : Mr.K.Varadhakamaraj
For Respondents : R1 and R2 – No Appearance
Mr.B.Sivakollappan for R3

J U D G M E N T

This appeal has been filed seeking to set aside the judgment



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and decree dated 03.01.2020 passed by the Motor Accident Claims Tribunal (Sub Court) Karaikal, in M.C.O.P.No.163 of 2016.

2.The learned counsel appearing for the appellant submitted that on 12.01.2016 at about 18.30 hours, the appellant claimant was riding the Hero Pleasure bearing Registration No.PY-01/CA 0622 at P.K.Salai in front of Mano Residency, Karaikal from East to West direction. At that time, a stage carriage passenger's bus bearing Registration No.TN-34-L-4282 driven by the first respondent, belonging to the second respondent and insured with the third respondent came in a rash and negligent manner and hit against the motorcycle, due to which, the appellant sustained injuries.

3.The learned counsel appearing for the appellant further submitted that thereafter, the injured claimant/ appellant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.50 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.9,18,666/- with interest at the rate of 7.5% p.a. from the date of petition viz., 26.07.2016 till the date of payment and costs and directed the third respondent to deposit the compensation along with interest and costs and to recover



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the same from the second respondent.

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4.The learned counsel appearing for the appellant further submitted that the Doctor assessed the disability of the appellant as 72% permanent disability, however, the Tribunal fixed the disability of the appellant at 40% and awarded only a sum of Rs.1,20,000/- for permanent disability instead of awarding compensation by adopting multiplier method which is very meagre and hence, the appellant claimant has filed this appeal for enhancement in compensation.

5.The learned counsel appearing for the third respondent Insurance Company submitted that though the appellant claim that she is employed in herbal shop, no income proof was filed before the Tribunal to establish her income and there is no functional disability. It is for the appellant to prove that after the accident, she is not able to continue her avocation as before and without substantiating the same by adducing evidence, claiming compensation as though she suffered functional disability is not sustainable. The learned counsel further submitted that the driver of the bus not possessed fitness certificate in his driving licence, thereby, the Tribunal directed the Insurance Company to deposit the compensation and to recover the



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same from the second respondent and hence, the impugned judgment warrants no interference.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the third respondent Insurance Company and perused the materials available on record.

7.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only questioning the quantum of compensation.

8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.1,20,000/- for permanent disability, Rs.1,00,000/- for pain and sufferings, Rs.3,64,666/- for medical expenses, Rs.50,000/- for future medical expenses, Rs.30,000/- for rich and nutritious food, Rs.50,000/- for attender charges, Rs.38,000/- for transportation expenses, Rs.96,000/- for loss of income during the period of treatment, Rs.70,000/- for loss of comfort and basic amenities during the period of treatment and arrived at a total compensation of Rs.9,18,666/- with interest at the



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rate of 7.5% p.a. from the date of petition viz., 26.07.2016 till the date of payment.

9.Perusal of records disclose that though the Doctor assessed the disability of the appellant as 72% permanent disability, the medical board has assessed the disability of the appellant as 40% and hence, the Tribunal fixed the disability of the appellant at 40%. Further no income proof was filed before the Tribunal to establish the employment and income of the appellant and the appellant has also not proved before the Tribunal that after the accident, she is not able to continue her avocation as before. Hence, the Tribunal not awarded compensation by adopting multiplier method.

10.The Tribunal fixed the disability of the appellant claimant as 40% and at the relevant point of time Rs.5,000/- per percentage of disability was awarded, however, the Tribunal has awarded only a sum of Rs.3,000/- per percentage of disability. Hence, if Rs.5,000/- per percentage of disability is awarded, the amount awarded for permanent disability works out to Rs.2,00,000/- [40% X Rs.5,000/- = Rs.2,00,000/-]. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are



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confirmed.

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11. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Permanent Disability	Rs.1,20,000/-	Rs.2,00,000/-
2.	Pain and sufferings	Rs.1,00,000/-	Rs.1,00,000/-
3.	Rich and nutritious food	Rs. 30,000/-	Rs. 30,000/-
4.	Attender charges	Rs. 50,000/-	Rs. 50,000/-
5.	Medical expenses	Rs.3,64,666/-	Rs.3,64,666/-
6.	Transport expenses	Rs. 38,000/-	Rs. 38,000/-
7.	Loss of income during the period of treatment	Rs. 96,000/-	Rs. 96,000/-
8.	Loss of comfort and basic amenities during the period of treatment	Rs. 70,000/-	Rs. 70,000/-
9.	Future medical expenses	Rs. 50,000/-	Rs. 50,000/-
	Total	Rs.9,18,666/-	Rs.9,98,666/-

12. The appellant claimant is entitled to total compensation of Rs.9,98,666/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of payment.

13. The civil miscellaneous appeal is partly allowed. The judgment and decree of the Motor Accident Claims Tribunal, (Sub Court) Karaikal in M.C.O.P.No.163 of 2016 dated 03.01.2020, is



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modified to the above extent only in respect of the quantum of compensation. No costs.

14.The third respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellant/ claimant is permitted to withdraw the modified/ enhanced award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,

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M.DHANDAPANI,J.
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