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CMA No. 2020 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2020 of 2023

Sowmiya

... Appellant

Versus

1. Kumaravel

2. National Insurance Co. Ltd.,
No.66, Greams Road,
Chennai – 600 006.
Respondents

...

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.03.2023 made in M.C.O.P. No.5818 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya

For Respondents : Mr.J.Michael Viswasam (for R2)
R1-Ex parte

J U D G M E N T



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The claimant has preferred the instant appeal challenging the quantum of compensation.

2. The appellant filed the claim petition stating that on 22.06.2019 at about 18.30 hours, while she was walking on the PKV Maha Nagar Road, near Kundrathur Vazhuthalamedu, a Crane bearing Regn.No.TN20BT3369 came in a rash and negligent manner and dashed against her, as a result of which, she sustained grievous injuries.

3. The 1st respondent remained *ex parte* before the tribunal. The 2nd respondent submitted that the accident did not take place due to the negligence of the crane driver; that in any case, the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

4. The appellant examined herself as PW1 and marked Ex.P1 to Ex.P18. The Disability Certificate issued by the Medical Board was marked as Ex.C1. The respondents neither examined any witnesses nor marked any document.



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5. The tribunal after considering the oral and documentary evidence awarded a total compensation of Rs.8,79,400/- to the appellant.

6. The learned counsel for the appellant submitted that the appellant had suffered functional disability and pursuant to the accident, she was terminated by her employer and marked Ex.P15-Termination Letter, to prove the same. The learned counsel therefore submitted that the tribunal ought to have applied multiplier method in the circumstances of the case and prayed for enhancement of the compensation.

7. Since the 1st respondent remained *ex parte* before the tribunal, the learned counsel for the appellant made an endorsement to dispense with notice to the 1st respondent and hence, notice to 1st respondent was dispensed with.

8. Mr.Michael Visuvasam, learned counsel for the 2nd respondent- Insurance Company *per contra* submitted that the award of the tribunal is just and reasonable. There is nothing on record to prove that the appellant had suffered functional disability. Considering the nature of injuries, the tribunal had rightly adopted percentage method to award



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compensation and therefore, no interference is called for.

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9. The only question in the instant appeal is whether the compensation awarded by the tribunal is just and reasonable?

10. On perusal of the records and on hearing the submissions of the learned counsel on either side, this Court finds that the appellant had suffered the following injuries.

'Extensive degloving injury right foot and ankle, right medial malleolus fracture with bone loss'

The appellant was examined by the Medical Board and the Medical Board assessed the disability at 40% and observed that it was a locomotive disability of the right lower limb and post traumatic sequelae at right foot.

11. The appellant had not examined the employer and marked only Ex.P15-Termination Letter. Considering the fact that the appellant was working as an Accountant in a private concern, it cannot be held that she had suffered total loss of earning capacity. However, considering the nature of injuries and the assessment made by the Medical Board, this Court is of the view that she would have suffered functional disability to



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the extent of 10%. Therefore, the appellant is entitled to compensation by applying multiplier method.

12. The appellant had produced Ex.P14-Salary slip which was accepted by the tribunal, to hold that the appellant was earning Rs.26,000/- per month at the time of the accident. Thus, the compensation under the head disability would be

$$\text{Rs.}26000/- \times 12 \times 16 \times 10/100 = \text{Rs.}4,99,200/-$$

13. Further, considering the fact that the appellant has taken treatment for 15 days from 22.06.2019 to 06.07.2019 in Dr.Rela Institute & Medical Centre, Chennai and also the nature of injury, the award of Rs.30,000/- towards Pain and Sufferings is enhanced to Rs.50,000/-; Similarly, the award of Rs.4,000/-, Rs.10,000/- and Rs.4,500/- under the heads Transportation, Extra Nourishment and Attender Charges are enhanced to Rs.10,000/-, Rs.15,000/- and Rs.10,000/- respectively.

14. The award under the other heads are just and reasonable and the same are confirmed. Thus, the award of the Tribunal is modified as follows;



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	2,00,000	4,99,200	Enhanced
2.	Pain and Sufferings	30,000	50,000	Enhanced
3.	Transportation	4,000	10,000	Enhanced
4.	Medical Expenses	4,76,898	4,76,898	Confirmed
5.	Extra Nourishment	10,000	15,000	Enhanced
6.	Attender Charges	4,500	10,000	Enhanced
7.	Loss of Earnings	1,04,000	1,04,000	Confirmed
8.	Loss of Amenities	50,000	50,000	Confirmed
	Total Rounded off to	8,79,398 8,79,400	12,15,098 12,15,100	Enhanced by Rs.3,35,700/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,79,400/- is hereby enhanced to Rs.12,15,100/- 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 respondent 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 copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire amount with



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proportionate 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.

19.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accidents Claims Tribunal, Special Sub Court No.2,
Small Causes Court, Chennai.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J.

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