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C.M.A.No.806 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.806 of 2022

and C.M.P.No.5791 of 2022

Bharathi Axa General Insurance Company Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai – 600 002.

... Appellant

VS

1.Uma Maheswari
2.M.Vinoth

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 08.03.2021 made in M.C.O.P.No.1586 of 2016 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellants : Mr.K.Poomalai

For Respondents

For R1 : Mr.K.Varadhakamaraj

For R2 : Not ready in notice



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J U D G M E N T

(Judgment of the Court was delivered by D.Krishnakumar, J.)

The civil miscellaneous appeal has been filed to set aside the Award passed in M.C.O.P.No.1586 of 2016 dated 08.03.2021 on the file of the Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai.

2. This appeal has been preferred by the Insurance Company, challenging the Award passed by the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai, in M.C.O.P.No.1586 of 2016.

3. The first respondent / claimant was working as a Headmistress in Government Higher Secondary School, G.K.M Colony, Chennai. On 07.01.2016, while she was walking along the road side near Ambedkar Statue, Post Office, Madhavaram High Road, Madhavaram, Chennai, a Share Auto bearing Reg.No.TN-05-Q-2025 proceeding from opposite direction, hit on her, due to which, she was thrown out and she had



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sustained various injuries viz., Spinal Cord Fracture, Ribs Fracture and multiple grievous injuries all over the body. According to the 1st respondent / claimant, due to the rash and negligent manner in which the driver was driving the insured vehicle, the said accident happened. Therefore, she has filed the claim petition in M.C.O.P.No.1586 of 2016.

4. The Tribunal has come to a conclusion that the liability should be fixed against the insured vehicle and the award has been passed fixing the liability as against the Insurance Company and the insured vehicle. Challenging the said Award, the appellant / Insurance Company had filed this instant appeal challenging the quantum by contending that the said compensation amount awarded by the Tribunal is excessive.

5. The learned counsel for the appellant / Insurance Company submitted that the Tribunal has wrongly awarded compensation of Rs.23,38,419.60/- under the head “Functional disability”, when there is no evidence or record to show that the first respondent / claimant is entitled for the compensation under the head “Functional disability”. He also contended



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that the amount granted by the Tribunal under the other heads are also excessive. Therefore, he seeks modification of Award passed by the Tribunal.

6. The learned counsel for the first respondent / claimant disputed that the Tribunal has taken into consideration various aspects and considering the oral and documentary evidence, awarded a sum of Rs.24,31,374.60/- as total compensation under various heads as follows;

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1.	Functional disability	Rs.23,38,419.60/-
2.	Pain and suffering	Rs.5,000/-
3.	Medical Expenses	Rs.87,955/-
4.	Transport	Nil
5.	Extra Nourishment	Nil
6.	Loss of Income 50 days during treatment period	Nil
7.	Loss of amenities of life	Nil
8.	30% disability (30x5000)	Nil
9.	Attender charges	Nil
10.	Damages to cloths	Nil
Total		Rs.24,31,374.60/-

7. According to them, the first respondent / claimant, she is the



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Headmistress in a School and at the time of accident, she was aged about 52 years and she had sustained grievous injuries on her spinal cord during the said accident. The Medical Board also assessed her disability at 30% and due to the accident, the first respondent / claimant could not attend her regular functions without aid of any attender. Therefore, the Tribunal has failed to consider this aspect and has not awarded compensation for attender charges for the first respondent / claimant.

8. Heard the parties concerned, and perused the materials available on record.

9. The point for consideration in this appeal is as to whether the Award passed by the Tribunal is excessive or not. Therefore, the claimant requests for modification of the award.

10. The primordial contention of the appellant / Insurance Company is that the compensation awarded by the Tribunal under the head “Functional Disability” is at Rs.23,38,419.60/-, by adopting multiplier



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method as per the decision of the Hon'ble Supreme Court in the case of

Smt.Sarala Varma and Others Vs Delhi Transport Corporation and Another reported in ***2009 (2) TN MAC 1 (SC)***.

11. According to the appellant / Insurance Company, the multiplier method adopted by the Tribunal will not apply to the facts of the present case on hand. The said multiplier method will only apply if there is Functional Disability. But in the present case on hand, no evidence has been placed by the first respondent / claimant to prove the same. There is Functional Disability assessed by the Medical Board and the records of the Medical Board disclose only 30% of the Functional Disability. But there is no mention about the permanent disability by the first respondent / claimant.

12. The learned counsel appearing for the 1st respondent / claimant has not disputed the said fact and had proved the case before the Tribunal that she is entitled for compensation under the head “Functional disability”. Therefore, the aforesaid contention of the appellant in the present case has to be accepted and therefore, the appellant / Insurance Company is entitled for modification of the Award.



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13. According to the first respondent / claimant, the Tribunal has not considered that in this case, per percentage method had to be adopted for the disability suffered by the first respondent / claimant. According to the learned counsel for the claimant, a sum of Rs.6,000/- is “just and fair” compensation per percentage for 30% disability.

14. The next contention of the appellant / Insurance Company is that the Tribunal has not awarded the compensation under the head “loss of amenities of life”, therefore, the claimant has suffered 30% disability. Therefore, some amount has to be awarded under the head “attender Charges” for the treatment period. Therefore, it is just and fair to award for loss of amenities to the first respondent / claimant. Therefore, this Court enhances a sum of Rs.2,00,000/- for loss of amenities of life.

15. Considering the facts and circumstances, the Tribunal has awarded a sum of Rs.23,38,419.60/- towards functional disability. Since the 1st respondent / claimant is an employee and the compensation awarded by the Tribunal under the head “Functional disability” is hereby deleted. The



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Tribunal has awarded compensation of Rs.5000/- towards pain and suffering. The claimant sustained serious injuries on her spinal cord and because of the same, she had to suffer till her life therefore, this Court is inclined to enhance the compensation under the head “pain and suffering” from Rs.5000/- to Rs.2,00,000/-.

16. The Tribunal has awarded a sum of Rs.87,955/- towards Medical expenses and the same shall stand confirmed. The claimant sustained grievous injuries during the said accident and therefore, this Court deems fit to award Rs.50,000/- for transportation. Certainly, the claimant needs nutritious food and she would have suffered want of nutrition and hence, Rs.25,000/- is hereby awarded for Extra nourishment. Due to the accident, the claimant suffered loss of earning for 50 days. Hence, Rs.1,20,000/- is granted for loss of earnings for 50 days during the treatment period. For loss of amenities of life, this Court is inclined to grant a sum of Rs.7,50,000/-. The Medical Board assessed 30% disability and Rs.5000/- per percentage be calculated as $(30 \times 5000 = 1,50,000/-)$ and accordingly, Rs.1,50,000/- is hereby awarded under the head “30% disability”.



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17. The claimant sustained injuries in spinal cord and therefore, she would have certainly sought help of an attender. Accordingly, Rs.1,00,000/- is awarded under the head “attender charges” and this Court feels it fit to award Rs.5000/- towards damages to cloths.

18. In the light of the above discussion, the award passed by the Tribunal fixing the compensation under various heads is modified as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1.	Functional disability	Nil
2.	Pain and suffering	Rs.2,00,000/-
3.	Medical Expenses	Rs.87,955/-
4.	Transport	Rs.50,000/-
5.	Extra Nourishment	Rs.25,000/-
6.	Loss of Income 50 days during treatment period	Rs.1,20,000/-
7.	Loss of amenities of life	Rs.7,50,000/-
8.	30% disability (30x5000)	Rs.1,50,000/-
9.	Attender charges	Rs.1,00,000/-
10.	Damages to cloths	Rs.5000/-
Total		Rs.14,87,955/-



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Therefore, the claimant is entitled to a sum of Rs.14,87,955/- (Rupees Fourteen Lakhs Eight Seven Thousand Nine Hundred and Fifty Five only) as total compensation.

17. In fine,

(i) The award dated 08.03.2021 passed in M.C.O.P.No.1586 of 2016 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai, is hereby modified, reducing the award amount from Rs.24,31,374.60/- to Rs.14,87,955/-. The interest awarded by the Tribunal remains unaltered.

(ii) The appellant / Insurance Company Limited is directed to deposit the entire award amount now quantified, to the credit of M.C.O.P.No.1586 of 2016, along with interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited from the date of claim petition till the date of deposit.



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WEB COPY (iii) On such deposit being made, the claimant is permitted to withdraw the entire award amount now quantified, with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

18. The civil miscellaneous appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.G.T.J.)

16.03.2023

Index : Yes/No

Neutral Citation : Yes/No

Speaking / Non- Speaking order

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To

1.Motor Accident Claims Tribunal,
IV Court of Small Causes,
Chennai.

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



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