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C.M.A.Nos.2588 & 2936 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.2588 & 2936 of 2022
and
C.M.P.Nos.20091 of 2022 & 19437 of 2203

C.M.A.No.2588 of 2022

Reliance General Insurance Company Ltd.,
Reliance House, R.O.Legal Department,
No.6, 6th Floor, Haddows Road,
Nungambakkam, Chennai - 600 006.

...Appellant

Vs.

1.V.Nithya
2.J.Arun

...Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 06.04.2022 passed in MCOP.No.6351 of 2015 on the file of the Motor Accident Claims Tribunal, IV-Court of Small Causes, Chennai.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents :Mr.K.Varadha Kamaraj for R1
R2-served- No appearance



C.M.A.No.2936 of 2022

V.Nithya

...Appellant

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Vs.

1..J.Arun

2.Reliance General Insurance Company Ltd.,
Reliance House, R.O.Legal Department,
No.6, 6th Floor, Haddows Road,
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For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.P.Suresh Srinivasan
R1-served- No appearance

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Both these appeals arise out of MCOP.No.6351 of 2015. The claim petition was lodged by the injured in a motor accident that occurred on 13.07.2015.



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2. According to the claimant, while she was standing on the extreme left side of the GST road at about 5.30 hours, a Car bearing registration No.TN-31-E-4353 was waiting behind a Bus bearing registration No.TN-01-N-5801. A Eicher Van bearing registration No.TN-69-AM-8263 driven by its driver in a rash and negligent manner dashed against the Car from behind. As a result of the impact, the Car hit the claimant resulting in grievous injuries. As a result of the injuries the left leg of the claimant was amputated above the knee and the right femur bone as well as the patella were fractured. The claimant, who was working as Housekeeper in a Company became almost immobile. Claiming that the disability caused has resulted in total loss of earning capacity, the claimant sought for a compensation of Rs.50,00,000/-. The quantum was sought to be supported by contending that she was earning Rs.9,000/- per month.

3. The claim was resisted by the Insurance Company contending that the accident did not occurred in the manner suggested by the claimant and that the claimant had also contributed to the accident. It is the further contention of the Insurance Company that the quantum claimed is excessive.



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4.The said original petition in MCOP.No.6351 of 2015 was tried along with MCOP.No.6130 of 2015, which was filed by the another victim of the same accident. The claimant in MCOP.No.6351 of 2015, which is the subject matter of these appeals was examined as P.W.2. Exs.P10 to P15 were marked on her side. Ex.C2, a certificate of the Medical Board, certifying that she has suffered 85% of disability was also marked. The Insurance Company did not let in any evidence. The owner of te Eicher Van remained absent.

5.The Tribunal on the appreciation of the evidence on record concluded that the accident had occurred due to the rash and negligent driving of the Eicher Van. In coming to the conclusion, the Tribunal relied upon the First Information Report and the fact that there was no evidence on the side of either owner or the Insurance Company to dispute the claim made. On the disability, the Tribunal took into account that the left leg had been amputated above the knee and the accident had resulted in fracture of the right femur bone also and concluded that the claimant cannot move freely without the assitance of others. It also found that the claimant cannot carry on her avocation.



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6. On the said findings, the Tribunal fixed the loss of earning capacity at 100%. Having fixed the loss of earning capacity at 100%, the Tribunal took the monthly income of the claimant at Rs.9,000/-, added 25% towards future prospects and arrived at the yearly loss of income at Rs.1,35,000/-. Since the claimant was aged 49 years at the time of the accident, the Tribunal applied the multiplier of 13 and arrived at Rs.17,55,000/- towards loss of earning capacity. It also awarded a sum of Rs.45,000/- towards loss of income, Rs.50,000/- towards pain and suffering, Rs.5,000/- towards transportation expenses, Rs.50,000/- towards nutrition expenses, Rs.1,000/- towards damages to clothes, Rs.50,000/- towards attender charges, Rs.50,000/- towards loss of amenities, Rs.25,000/- towards mental agony and Rs.25,000/- towards loss of marital status. In all, the Tribunal arrived at the total compensation of Rs.20,56,000/-. Aggrieved, both the Insurance Company and claimant are on appeal.

7. We have heard, Mr.K.Varadha Kamaraj and Mr.P.Suresh Srinivasan, learned counsel appearing for the parties.



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8.Mr.P.Suresh Srinivasan, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal was not right in fixing the loss of earning capacity at 100%, while the Medical Board had assessed the disability only at 85%. He would also point out that the Tribunal has granted Rs.25,000/- towards loss of marital status for 49 years old women. He would also point out that the claimant was described as a married woman in the claim petition itself. Therefore, according to the learned counsel, the compensation on the head of loss of marital status ought not to have been granted.

9.Contending contra, Mr.K.Varadha Kamaraj, learned counsel for the claimant would vehemently argue that the Tribunal has awarded a very low amount towards attender charges. Pointing out the finding of the Tribunal that the claimant is virtually immobile, the learned counsel would submit that the attender charges should be awarded at a higher rate, considering the fact that she would be forced to have a attender through out her life time. The learned counsel would submit that the loss of amenities awarded at Rs.50,000/- is very low. We have considered the rival submissions.



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10.A perusal of the discharge summary, which has been filed as Ex.P11 would show that the claimant has suffered a fracture in the shaft of the right femur bone, apart from a fracture in the acetabulum on the left side. It is also seen that there was an amputation above the knee of the left leg. The Tribunal has recorded a finding that the claimant has been rendered almost immobile and she cannot move about without the help of others. Each injury or fracture may contribute to a percentage of disability but depending on the profession of the avocation of the injured, the effect of the injury on the earning capacity will be different.

11.As we have pointed out that the claimant had claimed that she was working as a Housekeeper. As a result of the injuries and the disabilities suffered, it is certain that she cannot continue the said avocation. She cannot also do any other work due to the condition that she had incurred because of the injuries suffered at the accident. We are therefore, of the considered opinion that the Tribunal was right in fixing the loss of earning capacity or the functional disability at 100%.



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12. On the quantum, we are unable to fault the Tribunal for having fixed the income at Rs.9,000/- for an accident that had occurred in 2015. The said income is less than the salary of a last grade servant in the Government at the relevant period. We are therefore, not inclined to interfere with the quantum of compensation under the head of loss of earning capacity.

13. As regards the other heads, we find that the award towards loss of attender charges is little low but a sum of Rs.25,000/- awarded towards loss of marital status cannot be justified, since the claimant was married even at the time of the accident. Therefore, the award under the head of loss of marital status is set aside and the sum of Rs.25,000/- awarded under the head is added to the attender charges.

14. We do not find any other reason to enhance the award. The award, as on whole is just and reasonable. We are conscious of the fact that a woman aged about 49 years has suffered these injuries and she has to live with the disabilities till her life time, which agony cannot be compensated in



terms of money. We therefore, see no reason to interfere with the award of the Tribunal. In view of the same, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.The Insurance Company will deposit the balance amount within a period of twelve weeks from the date of receipt of a copy of this order. The Tribunal will pay out the 50%, which is already in deposit with accrued interest forthwith to the claimant. The balance amount shall be paid over to the claimant as and when it is deposited.

(R.S.M.,J.) (R.K.M.,J.)
08.09.2023

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

KKN

To:-

The Motor Accident Claims Tribunal,
IV-Small Causes Court,
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