



C.M.A.No.2667 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.2667 of 2017

G.Yamini

...Appellant

Vs.

1. Alagesan

2. P.Mani

3. United India Insurance Co. Ltd.,
Shanmuga Complex, 1-15, 24-H, First Floor,
New Edapadi Road, Sankari.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment and Decree dated 07.03.2017 made in M.C.O.P.No.5 of 2016 on the file of the MACT / Sub Court at Perundurai.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : R1 & R2 – Exparte
: Ms.I.Malar, for R3



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JUDGEMENT

Challenging the Judgment and Decree dated 07.03.2017 made in M.C.O.P.No.5 of 2016, the claimant has come up with this appeal.

2. It is the case of the appellant/claimant that, on 12.10.2015 at about 17.30 Hrs., when the appellant was standing in the Salem New Bus stand near Bhavani Bit, the 1st respondent drove the private bus bearing Regn.No.TN-52-F-4522, owned by the 2nd respondent and insured with the 3rd respondent, in a rash and negligent manner and hit against the appellant, as a result of which, the appellant sustained grievous injuries all over her body and got admitted in the hospital. Therefore, towards the injury suffered and also the loss of earning, the claimant preferred a claim petition claiming compensation of Rs.40,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.13,87,000/-. Aggrieved by the said order, the claimant is before this Court seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the above said accident occurred solely due to the rash and negligent driving of the 1st



respondent and at the time of accident, the appellant was aged about 32 years and was working as an Administrative cum Accounts Manager in a private concern and was earning a sum of Rs.25,000/- per month and due to the above said accident, the right leg of the appellant got amputated, due to which, she is not able to perform her avocation which she was carrying on before the accident and due to which, her earning capacity got reduced and therefore, it is evident that the appellant sustained functional disability. Further, it is pertinent to note that, the appellant sustained 70% permanent disability, however, the tribunal, instead of adopting multiplier method, had adopted the percentage method and awarded a compensation of Rs.2,10,000/- under the head Disability, which is *per se* illegal and the same has to be necessarily interfered with. Further, the compensation awarded under the other heads are also on the lower side and the same requires to be reconsidered and a higher compensation ought to be awarded to the appellant. Accordingly, he prays for appropriate enhancement in favour of the appellant.

4. Learned counsel appearing for the 3rd respondent/insurance company submitted that, even after the accident, the appellant is continuing her avocation



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and thereby, the disability suffered by the appellant cannot be treated as functional disability and only in order to get higher compensation at the hands of the 3rd respondent/insurance company, the appellant had falsely stated that she was unable to continue her avocation after the accident, which cannot be acceded to and no documentary evidence has been produced by the appellant to establish the said fact. Thereby, the tribunal, after taking into consideration all the above said facts had passed the present impugned award, which does not require any further enhancement as the same is on higher side. Accordingly, he prayed for dismissal of the appeal.

5. Heard learned counsel for the appellant and the learned counsel appearing for the 3rd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the appellant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that the accident is of the year 2015 and at the time of accident, the appellant was aged about 32 years and was working



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as an Administrative cum Accounts Manager and earning a sum of Rs.25,000/- per month, however, without considering the same, the Tribunal has fixed the monthly income at Rs.15,000/-. Further, though the appellant sustained 70% functional disability, instead of adopting multiplier method, the tribunal had adopted percentage method, which is wholly unsustainable.

7. A perusal of the impugned award reveals that, the tribunal had fixed the monthly income of the appellant as Rs.15,000/-, in which this Court does not finds any fault with as the same is in consonance with the ratio laid down by the Hon'ble Supreme Court in catena of decisions and the same was fixed by the tribunal by considering all the relevant documents placed before it and thereby, this Court is not inclined to interfere with the same.

8. Further, it is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the Disability certificate issued in favour of the appellant and also taking into account the age of the appellant and the nature of injuries suffered by her and also the fact that the right leg of the appellant got amputated in the above said accident and due to which, the



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appellant was unable to continue her avocation and thereby her earning capacity got reduced and is also facing various hardships in leading her day to day life, this Court holds that the appellant sustained functional disability and fixes the same at the rate of 50% and necessarily the multiplier method had to be adopted and to that extent, the impugned award passed by the tribunal needs to be interfered with.

9. The appellant was aged about 32 years at the time of accident as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in (2009) 6 SCC 121, and as the functional disability suffered by the appellant is fixed at 50%, the loss of income due to disability is arrived at Rs.15,000/-*12*16*70% = Rs.20,16,000/-.

10. Insofar as the compensation awarded under the heads Pain and Suffering, Attender charges and Damages to clothes are concerned, this Court is of the view that the compensation awarded under the said heads are on the higher side and accordingly, the same has to be interfered with. Further, a sum



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of Rs.4,00,000/- and Rs.1,00,000/- has been awarded under the heads “Future medical expenses” and “Loss of amenities” respectively, which is not sustainable and the same has to necessarily be interfered with.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income due to Disability	2,10,000/-	20,16,000/-
Pain and sufferings	1,00,000/-	50,000/-
Extra Nourishment	20,000/-	20,000/-
Transportation expenses	22,000/-	22,000/-
Damages to clothes	2,000/-	1,000/-
Attender Charges	40,000/-	20,000/-
Medical Expenses	48,000/-	48,000/-
For artificial leg and for future medical expenses	8,00,000/- (4,00,000 + 4,00,000/-)	4,00,000/-
Loss of income	45,000/-	45,000/-
Loss of amenities	1,00,000/-	-
Total	13,87,000/-	26,22,000/-

12. Accordingly, the appeal stands allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from



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Rs.13,87,000/- to Rs.26,22,000/-. The 3rd respondent/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.5 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

17.10.2023

skt

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

To

1.The Motor Accident Claims Tribunal / Sub Court,
Perundurai .

2.The Section Officer, V.R. Section, High Court, Madras.

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M.DHANDAPANI, J.

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