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CMA No. 2128 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2128 of 2023

Usha

... Appellant

Versus

1.Harikrishnan

2.L&T / HDFC General Insurance Co.Ltd.,

New No. 528, Old No.559, 2nd Floor,

Annasalai, Teynampet,

Chennai – 600018.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 2271 of 2017 dated 10.11.2021 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr. S. Thambi.

For Respondents : Mr. L. Rajasekar for R1.

Mr. N. Somasundar for R2.

J U D G M E N T

The claimant has preferred the instant appeal seeking enhancement of compensation in the award passed by the Tribunal in M.C.O.P. No.2271 of 2017 dated 10.11.2021.



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2. The claimant / appellant has filed the claim petition stating that on 02.01.2017 at about 7.30 hrs, while the appellant was walking in a public road and while crossing the road from South to North direction, a car belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed the appellant, as a result of which the appellant sustained grievous injuries.

3. The first respondent filed a counter stating that the accident took place only due to the negligence of the deceased; and that in any case, the vehicle was insured with the second respondent and the second respondent is liable to pay compensation.

4. The second respondent filed a counter stating that the accident took place only due to the negligence of the appellant as she had suddenly crossed the road; and that in any case, the compensation claimed was excessive and prayed for dismissal of the appeal.

5. The appellant examined PW1 and marked Ex.P.1 to Ex.P.9. The respondents neither examined any witness nor marked any document. The disability certificate issued by the Medical Board is marked as



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Ex.C.1.

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6.The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place due to the negligence of the driver of the car insured with the second respondent and directed the second respondent to pay a compensation of Rs.10,00,600/- to the appellant.

7.The learned counsel for the appellant submitted that the accident took place in the year 2017. The appellant's left foot was amputated and the Medical Board has assessed 37% permanent disability; that the appellant is unable to pursue her avocation and the Tribunal had rightly adopted multiplier method; that, however the notional income fixed was meagre; and that the award of compensation under the other heads are also meagre and sought for enhancement.

8.Heard the learned counsel for the first respondent. The learned counsel for the second respondent, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.



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WEB COPY 9. The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

10. On perusal of the records, it is seen that the appellant had suffered the following injuries; *'injury in left leg and crush injury over left foot and amputation of I, II, III MTP left foot and SSG done and K-wire fixed and Multiple injuries all over the body'* as per Ex.P.3, discharge summary. The appellant was examined by the Medical Board which had issued Ex.C.1, disability certificate. The Medical Board had observed as follows; *'Post Traumatic Sequelae – Left Foot due to RTA Crush Injury Left Foot, Amputation of 1st, 2nd, 3rd Toes Left. As far as the percentage of disability is concerned, 37% was assessed'*. Considering the fact that the left foot was amputated, this Court is of the view the fixing the functional disability at 37% is justified. Hence, no interference is called for in the said finding. As regards the notional income, this Court is of the view that considering the fact that the appellant had established that she was a curry leaf seller as per Ex.P.7, identity card issued by the Curry Leaf Trader Welfare Association, this Court is of the



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view that it would be just and reasonable to fix Rs.12,000/- per month as notional income. Since the appellant was aged 35 years, she is entitled to 40% enhancement towards future prospects and the multiplier applicable is 16. Therefore, the compensation under the head disability would be $\text{Rs.12,000} + 4,800 = \text{Rs.16,800/-} \times 12 \times 16 \times 37/100 = \text{Rs.11,93,472/-}$ rounded off to Rs.11,93,500/-. Further, it is seen that the Tribunal was right in awarding compensation under the head loss of income for a period of three months. Hence, the compensation under the head loss of income would be Rs.36,000/- (Rs.12,000 X 3). It is further seen that the Tribunal has awarded Rs.15,000/- towards pain and sufferings and Rs.10,000/- towards mental agony. Since it would amount to duplication, award under the head mental agony is set aside and the compensation under the head pain and sufferings is enhanced to Rs.50,000/- considering the nature of injuries and amputation suffered by the appellant. Further, the compensation under the head Loss of Amenities is enhanced to Rs.50,000/-, the compensation under the head Transportation is enhanced to Rs.15,000/- and the compensation under the head Attender Charges is enhanced to Rs.30,000/-. The award under the other heads are just and the same are confirmed. Thus, the compensation awarded by 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	8,95,104	11,93,500	Enhanced
2.	Loss of Income	27,000	36,000	Confirmed
3.	Pain and sufferings	15,000	50,000	Enhanced
4.	Transport Expenses	7,500	15,000	Enhanced
5.	Nutrition expenses	20,000	20,000	Confirmed
6.	Damages to Clothes	1,000	1,000	Confirmed
7.	Attender Charges	15,000	30,000	Enhanced
8.	Loss of amenities	10,000	50,000	Enhanced
9.	Mental agony	10,000	---	Set aside
	Total	10,00,604 rounded off to 10,00,600	13,95,500	Enhanced by Rs.3,94,900/-.

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,00,600/- is hereby enhanced to Rs.13,95,500/-, 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 second 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



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period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount, along with proportionate interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

29.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

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

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



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SUNDER MOHAN, J

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Dated: 29.09.2023