



C.M.A.No.4481 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4481 of 2019

Selvi

.. Appellant

Vs.

1.U.Sivakumar

2.S.Tamilselvi

3.Royal Sundaram Alliance Insurance Co.Ltd.,

Branch office at 1st Floor

Sri Krishna Plaza

No.1, Nachiappa Street

Erode-638 001.

(1st and 2nd respondents were set exparte
before the Tribunal)

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.06.2014 made in MCOP No.122 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode.

For Appellant

: Mr.S.Arun Prasath



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for Mr.M.Guruprasad

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For Respondents

: Mr.G.Vasudevan for R3
R1 & R2 - Exparte

J U D G M E N T

The judgment and decree dated 20.06.2014 passed in MCOP No.122 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode, is under challenge in the present Civil Miscellaneous Appeal.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.4,75,000/- together with interest and costs to the Appellant/claimant which is detailed hereunder:



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income Rs.3000 x 10 months	30,000/-
Disability of 73.5% at Rs.2000 per percentage	1,47,000/-
Pain and Sufferings	75,000/-
Extra Nourishment	20,000/-
Damages for cloths and articles	1,000/-
Transport Expenses	15,000/-
Past Medical Expenses	1,12,000.00
Future Medical Expenses	50,000.00
Compensation for loss of earning power	25,000/-
Total	4,75,000/-

4. Before the Tribunal, the Appellant/claimant has filed 28 documents which were marked as Ex.P1 to Ex.P28 and examined herself as PW1 and the Doctor, who examined the claimant as PW2. On the side of the 3rd respondent/Insurance Company, neither any document was filed nor any witness was examined before the Tribunal. The 1st and 2nd respondents were set exparte.



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5. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. The appellant/claimant sustained multiple fractures due to the accident and had taken treatment as inpatient for a period of two weeks. She was working as House Maid and was earning about Rs.10000/- per month and there is a loss of earning power. The doctor assessed the disability at 73.5%. All these aspects have not been considered by the Tribunal. Contrary, the Tribunal has fixed the disability at Rs.2,000/- for one percentage and calculated the compensation, which is improper and inadequate.

6. It is contended by the appellant/claimant that at the time of accident, she was aged about 40 years and the grievous injuries caused disability and the movement of the right hand is restricted, due to which, the appellant/claimant was incapacitated to perform her work as house maid in a routine and normal manner.



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7. The learned counsel appearing on behalf of the 3rd respondent/Insurance Company disputed the contentions by stating that the Tribunal has assessed the compensation with reference to the documents produced by the claimant. There is no proof to establish the monthly income of the appellant/claimant. Thus, in the absence of any document to establish the monthly income, the Tribunal has arrived the conclusion and fixed the monthly income of the appellant/claimant as Rs.3,000/- and awarded compensation. Thus, the appeal is devoid of merits and is to be dismissed.

8. Considering the arguments, the accident occurred on 28.12.2011 at about 11.45 a.m at Erode to Pallipalayam Main Road, near Cauvery Check Post. The Karungalpalayam police station registered a case in Crime No.860 of 2011 under Sections 279, 337 IPC. The appellant/claimant sustained grievous injuries viz., i) collar bone fracture in 3 places; ii) nerves cut off at neck, iii), bone fracture at right side of hip, iv) grievous injury at right shoulder, v) bone fracture with severely nerves damaged at right hand, vi) injury at right eyebrow, forehead, right back side of the body, vii)



abrasion all over her body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The negligence was attributed against the driver of the bus, who is the 1st respondent herein. The findings of the Tribunal is that the bus driver had driven the vehicle in a rash and negligent manner which resulted in an accident. As far as the quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.2,000/- for one percentage. Therefore, this Court is of the considered opinion that the accident occurred in the year 2011 and fixing a sum of Rs.2,000/- is on the lesser side. The appellant/claimant is a house maid. Thus, a sum of Rs.3,000/- for one percentage of disability would be appropriate considering the fact that the accident occurred during the year 2011. This apart, the appellant had taken her treatment for about two weeks and the monthly income has been fixed only as Rs.3,000/-. This also deserves to be enhanced. The appellant/claimant had taken treatment even after her discharge from the hospital. Therefore, it would be appropriate to fix Rs.3,500/- as monthly income and the loss of income assessed for a period of ten months is correct. Further, the compensation



awarded by the Tribunal under the other heads namely pain and suffering, extra nourishment, damages for cloths and articles, transport expenses are inadequate and the same has to be enhanced. Accordingly, it is just and reasonable to enhance the compensation of Rs.80,000/- towards Love and Affection, Rs.30,000/- towards extra nourishment, Rs.5,000/- towards damages for cloths and articles and Rs.20,000/- towards transport expenses respectively.

9. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

10. For the forgoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	(Rs.3000 x 10) 30,000/-	(Rs.3500 x 10) 35,000/-
Disability	(Rs.2000 x 73.5%) 1,47,000/-	(Rs.3000 x 73.5%) 2,20,500/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pain and Sufferings	75,000/-	80,000/-
Extra Nourishment	20,000/-	30,000/-
Damages for cloths and articles	1,000/-	5,000/-
Transport Expenses	15,000/-	20,000/-
Past Medical Expenses	1,12,000.00	1,12,000/-
Future Medical Expenses	50,000/-	50,000/-
Compensation for loss of earning power	25,000/-	25,000/-
Total	4,75,000/-	5,77,500/-

Accordingly, the claimant is entitled to a compensation of Rs.5,77,500/- (Rupees five lakhs seventy seven thousand and five hundred only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal is enhanced from Rs.4,75,000/- to Rs.5,77,500/-. No costs.

(ii) The third respondent/insurance company is directed to



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deposit the revised compensation of Rs.5,77,500/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

(iv) The appellant/claimant is directed to pay court fee for the enhanced compensation amount before drafting the decree and the Registry is directed to draft the decree after the receipt of the court fee.

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Index : Yes/No
Speaking Order/Non-Speaking Order
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To

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1.The Motor Accident Claims Tribunal,
Special Sub Court, Erode

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

A.A.NAKKIRAN, J.

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