



C.M.A.No.1635 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1635 of 2019

V.K.Shanthi

... Appellant/Petitioner

Vs

1.Raghuram Shetty

2.K.Sandeeb

3.New India Insurance Co.Ltd,
Kannur

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and decree datd 12.07.2013 made in M.A.C.T.O.P.No.11 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Mahe.

For Appellant

... Mr.Krishna Prasad
for M/s.Sarvabhauman Associates

For Respondents

... No Appearance [R1] & [R2]
... M/s.S.R.Sumathi [R3]



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JUDGMENT

Aggrieved by the impugned award dated 12.07.2013 passed by the Motor Accident Claims Tribunal, Sub Judge, Mahe made in M.A.C.T.O.P.No.11 of 2011, the Appellant/claimant has filed the present Appeal seeking enhancement of compensation.

2. On 30.04.2010, when the claimant was standing along with her husband by the side of National Highway 17 near Rghavendra Mutt of Hosbetty Village, the bus bearing Regn No.KA19AE/7867, belonging to the 2nd respondent, insured with the 3rd respondent/Insurance Company driven by the 2nd respondent in a rash and negligent manner and hit against the claimant due to which, the claimant and her husband sustained grievous injuries. Aggrieved by which, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Sub Judge, Mahe in M.A.C.T.O.P.No.11 of 2011 claiming compensation of Rs.8,00,000/- towards the injuries sustained by her.



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3. Before the Tribunal, the claimant examined herself as P.W.1, examined the doctor as P.W.2 and one K.P.Radhakrishnan as P.W.3 and marked Ex.P-1 to Ex.P-21. No witnesses were examined nor any documents were marked on the side of the respondents. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.1,69,721/- under various heads. Aggrieved by the quantum of compensation awarded, the Appellant/claimant has filed the present Appeal seeking enhancement of compensation.

4. Learned counsel appearing for the Appellant/Claimant submitted that when the Tribunal has accepted that the bus was driven in a rash and negligent manner and was the cause for the accident, when the doctor P.W.2 has clearly deposed about the injuries sustained by the claimant, the compensation awarded by the Tribunal is grossly inadequate. When P.W.2 has deposed that the claimant has suffered 39% of disability, however, the tribunal has taken only 15% of disability into consideration and has awarded a sum of Rs.29,250/- towards disability which is wholly inadequate. At the time of accident, the claimant was doing tailoring job and was earning a sum of



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Rs.6,000/- per monthly, however, without considering the same, the Tribunal had fixed the notional income at 15,000/- per year which is on the lower side. Further, the amount awarded under the heads is also minimal, which requires enhancement.

5. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that the Tribunal after considering all the oral and documentary evidences placed in support of the claim petition and also the relevant factors, has rightly fixed the quantum of compensation which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant/Claimant as well as the 2nd respondent/Insurance Company and perused the materials available on record.



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7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. On the question of compensation, this Court had perused the impugned award whereby the Tribunal, has fixed the notional income at Rs.15,000/- per year and has awarded a sum of Rs.Rs.29,250/- (15,000/- * 15 * 13) under the head permanent disability by adopting multiplier method which is erroneous. In this regard, this Court had perused the disability certificate issued by the P.W.2 viz., Ex.P-15. However, considering the age and the nature of injuries suffered by the claimant, this Court is of the view that fixing the disability at 30% would be just and reasonable. Accordingly, the amount under the head of disability stands enhanced to a sum of Rs.90,000/- (30 x Rs.3,000/- = Rs.90,000/-). Insofar as the claim of compensation under the head loss of earning capacity, the claimant has not adduced any proof of income and in the absence of any proof, no compensation can be awarded under the said head.



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8. Further, the Tribunal has awarded a sum of Rs.84,741/- towards Medical expenses and Rs.5,000/- towards Travelling expenses; this Court finds that the compensation awarded under above heads are just and reasonable and does not require any interference. However, a sum of Rs.50,000/- awarded towards pain and sufferings is excessive and hence the same is reduced to a sum of Rs.25,000/- and to that extent the compensation awarded under the said head is modified.

9. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1.	Travelling expenses	Rs.5,000/-	Rs.5,000/-
2.	Medical expenses	Rs.85,471/-	Rs.85,471/-
3.	Disability (Rs.15,000/- * 15* 13)	Rs.29,250/-	Rs.90,000/- (enhanced)
4.	Pain and sufferings	Rs.50,000/-	Rs.25,000/- (reduced)
	Total	Rs.1,69,721/-	Rs.2,05,471/-



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10. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.1,69,721/-** to **Rs.2,05,471/-**. The third respondent-Insurance Company is directed to deposit the enhanced amount to the credit of M.A.C.T.O.P.No.11 of 2011 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 amount directly to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. The Appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the appellant/claimant. There shall be no order as to costs in the present appeal.

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M.DHANDAPANI, J

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

To

- 1.The Motor Accident Claims Tribunal,
Special Sub Court No.1, Salem.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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