



CMA.No.1294 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

PRONOUNCED ON : 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1294 of 2019

CMP.No.3571 of 2019

National Insurance Company Limited
by its Branch Manager, Dharmapuri

Appellant

Vs

1. Sangeetha

2. R.Chennammal

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 25.11.2011, made in MCOP.No.789 of 2008, by the Principal Subordinate Judge (MACT) Krishnagiri.

For Appellants : Mr.P.S.Ganesh for Mr.K.Padmanabhan

For Respondents : R1-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 25.11.2011, made in MCOP.No.789 of 2008, by the Principal Subordinate Judge (MACT) Krishnagiri.
2. The 1st Respondent has filed the claim petition before the Tribunal, seeking a



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compensation of Rs.5,00,000/- on various heads, for the injuries sustained by her in a motor road accident, which took place on 22.05.2008. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. The 2nd Respondent, owner of the offending vehicle remained exparte. On the side of the claimants, PW.1 and PW.2 were examined and Ex.A1 to Ex.A6 were marked.

3. Finding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, belonging to the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.2,66,000/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability	60000.00
2	Pain and Suffering	7000.00
3	Transport, Nutrition and Attender	7000.00
4	Loss of Income	192000.00
Total Compensation		266000.00

Aggrieved by the quantum of compensation, this appeal has been filed by the Appellant Insurance Company.

4. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to



narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellant, since the injured suffered only a non schedule injury, namely, fracture on the left hand elbow, the Tribunal erred in awarding compensation towards permanent disability,
7. As per Ex.A2 X-Ray Report and Ex.A4 wound certificate, the injured suffered a fracture in the left hand elbow, which is a non schedule injury and hence, the Tribunal is not justified in awarded compensation of Rs.60,000/- towards permanent disability and therefore, it is set aside. However, considering the avocation of the injured as a Tailor and the nature of injuries, she would have earned not less than Rs.1,000/- p.m. Hence, the compensation of Rs.1,92,000/- towards loss of income arrived at by the Tribunal is proper and the compensation awarded under the other heads are also proper. In all, the claimant is entitled to a total compensation of Rs.2,06,000/- with interest at 7.5% p.a. from the date of the petition till the date of realisation.
8. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants is entitled to a total compensation of Rs.2,06,000/- (Rupees two lakhs six thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Income	192000.00
2	Pain and Suffering	7000.00
3	Transport, Nutrition and Attender	7000.00
Total Compensation		206000.00



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The Appellant Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within

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a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same with interest, by filing proper application. No costs. Consequently, the connected MP is closed.

05.06.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Principal Subordinate Judge (MACT) Krishnagiri.
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.1294 of 2019