



C.M.A.No.2376 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM :

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

C.M.A.No.2376 of 2018

and

C.M.P.No.18080 of 2018

United India Insurance Co. Ltd.,
Big Bazaar Street,
Dharapuram.

... Appellant/2nd Respondent

Vs.

1.Abiramidevi

... Respondent/Petitioner

2.K.R.Balasubramaniam

... Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 03.04.2017 made in M.C.O.P.No.267 of 2011 on the file of Motor Accident Claims Tribunal, The Subordinate Judge, Dharapuram.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.Ma.P.Thangavel [R1]
No appearance [R2]



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JUDGEMENT

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The Insurance Company has filed this appeal challenging the adoption of multiplier method by the Motor Accidents Claims Tribunal, Subordinate Judge, Dharapuram in M.C.O.P.No.267 of 2011 for calculating the loss of earning due to disability especially when disability has no impact on the earning capacity of the claimant.

2. On 08.02.2010 at about 09.00 a.m., the claimant was walking near Fathima Metric School at Mithiparai on the left side of the Kangayam to Muthur Road. At that time, the first respondent driving the car bearing Reg.No.TN 47 C 5758, which was insured with the appellant/Insurance Company, from West to East in a rash and negligent manner, dashed against the claimant. Due to the said accident, the claimant sustained fractures over her left leg and head injury and multiple injuries all over her body. Immediately, she was taken to Government Hospital at Kangayam and thereafter, she was taken to L.K.M.Hospital at Erode and admitted as an inpatient and had taken treatment for 15 days. Thereafter, the claimant filed a claim petition claiming a total compensation of a sum of Rs.3,00,000/- under various heads.



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3. Before the Tribunal, the petitioner had examined herself as P.W.1 and marked 9 documents viz., Ex.P.1 to Ex.P.9. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal has marked the disability certificate as X.1. After adjudication, the Tribunal awarded a sum of Rs.2,46,833/- with an interest of 7.5% p.a. Aggrieved by the same, the Insurance Company had filed the present appeal.

4. The learned counsel appearing for the appellant/Insurance Company submitted that though the claimant has suffered only 18% disability and lacerated injury all over her body, however, the Tribunal had arrived at a conclusion that there was a functional disability and by applying multiplier method, the Tribunal had awarded a sum of Rs.1,94,400/- towards loss of earning due to disability, which is highly excessive. Further, the amount awarded under the other heads are also highly excessive, which requires to be reduced. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that, the Tribunal, taking into consideration



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all the relevant documents had rightly fixed the compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The present appeal is filed as against the quantum of compensation arrived by the Tribunal. A perusal of X.1, the Disability Certificate reveals that, the first respondent has sustained permanent disability of 18%. This document would clearly prove that she can resume her teaching profession after her treatment and that the said injury sustained by her would not have any impact on the earning capacity of the claimant.

8. In view of the fact that the disability suffered by the claimant does not have any impact on the earning capacity of the claimant, the adoption of



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multiplier method by the Tribunal below is totally erroneous and is liable to be modified. Therefore, taking a sum of Rs.4,000/- per percentage of disability and fixing the disability sustained by the first respondent at 20%, the loss of earning due to disability is reassessed on percentage basis i.e., Rs.4,000/- x 18 = 72,000/- and, accordingly, loss of earning due to disability is reduced from Rs.1,94,400/- to a sum of Rs.72,000/-.

9. Since the first respondent has undergone surgery and taken treatment in the hospital, the amount under the head of Attender charges is enhanced to a sum of Rs.5,000/- and a sum of Rs.15,000/- (Rs.5,000/- * 3 = Rs.15,000/-) is awarded towards loss of earning during treatment period by fixing a sum of Rs.5,000/- per month as income. Further, the amount of compensation awarded under the heads transportation, extra nourishment and pain and suffering is enhanced to Rs.5,000/-, 5,000/- and 25,000/- respectively, as this court is of the considered view that the compensation awarded by the Tribunal under the aforesaid heads are very meagre and is not excessive as claimed by the insurance company and, therefore, the said heads of compensation deserves enhancement.



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10. In the above circumstances, the compensation awarded by the Tribunal is 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	Permanent Disability	18,000/-	72,000/- (18 * 4,000)
2	Loss of earning	1,94,400/-	-
3	Pain and suffering	15,000/-	25,000/-
4	Medical expenses	10,633/-	10,633/-
5	Attender charges	1,800/-	5,000/- (enhanced)
6	Extra nourishment	3,000/-	5,000/- (enhanced)
7	Transportation	4,000/-	5,000/- (enhanced)
8	Loss of earning during treatment	-	15,000/-
	Total	2,46,833/-	1,37,633/-

11. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.2,46,833/-** to **Rs.1,37,633/-**. By order dated 11.10.2018, this Court directed the appellant/Insurance Company to deposit 50% of the award amount. It is informed by the learned counsel appearing for the appellant that the Insurance Company has already deposited the same. Further, the



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appellant/Insurance Company is directed to deposit the balance of the modified award amount to the credit of M.C.O.P.No.267 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 already deposited, within a period of four weeks (4) 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 claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

01.11.2023

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

1.The Motor Accident Claims Tribunal,
The Subordinate Judge,
Dharapuram.

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



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M.DHANDAPANI, J.,

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