



C.M.A.No.3727 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3727 of 2019

B.Gowry

... Appellant/Claimant

vs.

1. P.Krishnamurthy
(R1 remained exparte before the Tribunal)

2.The New India Assurance Co. Ltd.
5/19, Seven Wells Street,
St. Thomas Mount
Chennai – 16

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 07.02.2011 made in M.A.C.T.O.P.No.3591 of 2008 on the file of the Motor Accident Claims Tribunal II Small Causes Court, Chennai, for enhancement.

For Appellant : Ms.Sunithi Abirami.M
for M/s.M.Malar

For Respondents : Mr.K.Thirunavukkarasu for R2
R1-Exparte



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JUDGMENT

Not being satisfied by the Award, this Civil Miscellaneous Appeal is preferred by the appellant/claimant herein assailing the Judgment and Decree made in M.A.C.T.O.P.No.3591 of 2008 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) Chennai, dated 07.02.2011, for enhancement.

2. The claim petition was filed by the claimant under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules claiming compensation of Rs.6,00,000/- for the injuries sustained by her in a road accident that took place on 15.04.2008.

3. The Tribunal, after hearing the arguments of both sides and upon considering the oral and documentary evidence, has granted compensation of Rs.1,48,000/- holding that the 1st and 2nd respondents are jointly and severally liable to pay the said compensation, with interest at the rate of 7.5% per annum.



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4. The learned counsel for the appellant would vehemently contend that as the appellant has sustained fracture in the shaft of tibia and fibula-right Leg, she was under treatment for 4 days in Sri Balaji Hospital, Chennai. She would further contend that though Dr.N.SaiChandran/P.W.2 has assessed the disability as 50%, the Tribunal has fixed the disability as 35%. It is her argument that the appellant was said to be a Tailor and due to the injuries sustained, she is not in a position to do her work as she did before and for calculating the loss of income, the multiplier method would have been adopted. To buttress her arguments, the following Judgments were referred to;

(i) In **Raj Kumar Vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC)**, the Hon'ble Supreme Court has held that;

“8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of Future Earnings, would depend upon the effect and impact of such permanent disability on his earning capacity”.

It is further held that ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps and the Hon'ble Supreme Court has given the guidelines as follows;



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The Tribunal has to first ascertain what activities the Claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disable from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

The Hon'ble Supreme Court has also elaborated as to how the disability is to be assessed considering the physical or functional disablement.

(ii) *In Erudhaya Priya Vs. State Transport Corporation Ltd. reported in 2020 (2) TN MAC 303 (SC)*, the Hon 'ble Supreme Court has held that in a case of injured/claimant, who is a Software Engineer, aged 23



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years, who suffered multiple fractures in arms and Legs and was treated as inpatient for a long period on eight occasions in different spells from August 2011 to January 2013, the disability was assessed as 31.1% for the whole body. The Tribunal, fixed the monthly income at Rs.14,648/- per month and by applying Multiplier 17, awarded Rs.9,27,424/- towards the loss of Earning Capacity due to 31.1% disability. Whereas, the Supreme Court, in appeal, enhanced the award amount to Rs.9,81,978.76/- by applying the multiplier 18.

5. Per contra, the learned counsel for the 2nd respondent/insurance company would strenuously argue that the Doctor who treated the appellant was not examined and the disability assessment made by P.W.2/Dr.N.Saichandran is on the higher side. He would further contend that the appellant has not established as to the functional disability suffered by her. He would also stress that adoption of multiplier method is not agreeable and the Judgments cited are not applicable to the present case.

6. In order to substantiate the case, on the claimant's side, two witnesses have been examined, namely, the claimant and the Dr.N.Saichandran who assessed her disability and six documents have



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been marked as Ex.P.1 to Ex.P.6 in which, the Discharge Summary, Hospital Bills and Medical Bills are marked as Ex.P.2 to Ex.P.4 respectively.

7. On the insurance company side, neither any oral evidence was let in nor any document was marked.

8. Heard the rival contentions put forth by the learned counsels for both sides and perused the entire materials available on record.

9. The manner in which the accident occurred is not in dispute. From the evidence of P.W.1, it is seen that on 15.04.2008, at 4.00 p.m., when the appellant/claimant herein was standing at Adambakkam Kakkan Nagar Main Road, a motor cycle bearing Reg. No.TN-1-S-6097, came in a rash and negligent manner from south to north, hit her and she sustained severe injuries.

10. It could be seen from Ex.P.2/Discharge Summary of Sri Balaji Hospital, Chennai, that the appellant was admitted in the said hospital for 4 days and had undergone surgery. For “fracture of both bones right leg,



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open reduction and internal fixation of right tibia” was done.

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11. The date of accident was 5.04.2008. The Doctor/P.W.2 has assessed the disability as 50%. Whether the injuries sustained by her has resulted in loss of earning capacity has to be seen. As it could be seen from the Discharge Summary/Ex.P.2 that because of the internal fixation of right tibia, certainly she would find difficult in doing tailoring work as she did before. There cannot be any second opinion that she may also find some difficulties while lifting weight and climbing stairs etc. However, as the appellant being a tailor, she can even fix a motor in the Tailoring Machine and continue her work. Therefore, with some difficulties, the appellant can carry on her work as a Tailor. Though she cannot effectively carry on as she was carrying on earlier, as stated supra, with some difficulties, she may carry on her Tailoring work.

12. As discussed above, invoking of multiplier method is not warranted. However, in the process of awarding just compensation, an amount of **Rs.17,500/- (Rupees Seventeen Thousand Five Hundred Only)** is awarded for the disability suffered by her on account of the accident, in addition to the amount already awarded.



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13. More so, in ***Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd.***, reported in **2014 (1) TN MAC 459 (SC)**, the Hon'ble Supreme Court has fixed the income of a Vegetable Vendor aged 34 years as Rs.6,500/- for the accident occurred in the year 2008. Therefore, this Court deems fit to fix the monthly income of the appellant at Rs.6,500/- (Rupees Six Thousand Five Hundred) and considering the fracture sustained by the appellant, for the loss of income for 5 months, a sum of **Rs.32,500/-** is awarded (Rs.6,500/- per month x 5 months = Rs.32,500/-, less the amount already awarded - Rs.32,500/- (-) Rs.9,000/- = Rs.23,500/-).

14. That apart, an amount of **Rs.10,000/-** is granted for the pain and sufferings undergone by the appellant, in addition to the amount already awarded by the Tribunal. Further, taking into account of the nature of injury suffered, for the loss of amenities, an amount of **Rs.15,000/-** is granted to the appellant.

15. In respect of other heads, it appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is



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reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Permanent Disability	Rs.70,000/-	Rs.87,500/-	Enhanced
2	Loss of Income during Treatment	Rs.9,000/-	Rs.32,500/-	Enhanced
3	Transport Charges	Rs.1,000/-	Rs.1,000/-	Confirmed
4	Extra Nourishment	Rs.2,000/-	Rs.2,000/-	Confirmed
5	Damage to Clothes and articles	Rs.1,000/-	Rs.1,000/-	Confirmed
6	Medical Expenses	Rs.50,000/-	Rs.50,000/-	Confirmed
7	Pain and Sufferings	Rs.15,000/-	Rs.25,000/-	Enhanced
8	Loss of Amenities	-	Rs.15,000/-	Awarded
	Total	Rs.1,48,000/-	Rs.2,14,000/-	

16. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.1,48,000/- to Rs.2,14,000/-** which would carry interest at the rate of 7.5% per annum **from the date of numbering of the petition i.e.29.10.2008** till the date of realisation.

17. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from



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Rs.1,48,000/- to Rs.2,14,000/-

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(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.2,14,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition i.e.29.10.2008** till the date of deposit to the credit of M.A.C.T.O.P.No.3591 of 2008 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai) Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

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Index : Yes/No
Speaking / Non-speaking order
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To:

1. The Motor Accident Claims Tribunal
(II Court of Small Causes, Chennai) Chennai,
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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