



C.M.A(MD)No.373 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.11.2022

PRONOUNCED ON:24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.373 of 2022

Subbulakshmi : Appellant / Claimant

Vs.

1.M.Kanagasabapathy

2.Muthukothalathan

3.The Zonal Manager,
I.C.I.C.I. Lamboard General Insurance
Company Limited,
Loyalaya Technical Institute Building,
7AA Road, 1st Floor,
Ganaolipuram, Madurai.

: Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, passed by the Motor Vehicle Accident Claims Tribunal / Chief Judicial Magistrate



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Court, Virudhunagar District at Srivilliputtur in M.C.O.P.No.1 of 2019
(Old No.27 of 2009) on 14.05.2019.

For Appellant : Mr.M.Jothi Basu

For Respondents :Mr.V.Sakthivel
for R.3

: No Appearance for R.2

: R.1 – Exparte

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1 of 2019, dated 14.05.2019, on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur.

2. The appellant/claimant, who was awarded with compensation of Rs.4,69,700/- with interest at 7.5% p.a., along with costs for the disability suffered consequent to an accident occurred on 22.06.2008, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the award.



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3. During trial, the claimant has examined herself as P.W.1 and exhibited 7 documents as Exs.P.1 to P.7. The first respondent had remained exparte. The respondents 2 and 3 have adduced neither oral nor documentary evidence. The claimant's disability certificate has been exhibited as Ex.C.1. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing both sides, has passed the impugned award dated 14.05.2019 holding that the first respondent – driver of the second respondent's vehicle was responsible for the accident and directed the third respondent – Insurer to pay compensation of Rs.4,69,700/- along with interest and costs. Aggrieved by the said award, the claimant has come forward with the present Civil Miscellaneous Appeal.

4. The learned Counsel for the appellant would contend that though the claimant has filed a petition seeking compensation of Rs. 40,00,000/-, the trial Court has awarded only a sum of Rs.4,69,700/-, which is very low and inadequate. He would further submit that the appellant/claimant is a widow and at the time of accident, she was working as a labourer in the fireworks company, that she lost her right



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hand below the elbow in the accident and hence, she has also lost her job and that therefore, the trial Court ought to have seen that the claimant has sustained 100% functional disability due to the accident. The learned Counsel would further contend that the monthly income fixed at Rs. 3,000/- is very low and the trial Court ought to have fixed Rs.7,500/- p.m., as the income of the claimant, that the trial Court, without considering the Bank Pass Book and Aadhar card, has fixed the age of the claimant as 48 years, instead of 42 years. He would further submit that the trial Court has awarded only a sum of Rs.5,000/- under the head of medical expenses and Rs.50,000/- under the head of future medical expenses, which are low and that the trial Court awarded only a sum of Rs.1,00,000/- towards pain and suffering.

5. The point that arise for consideration is “Whether the quantum of compensation awarded at by the Tribunal is just and fair and is in accordance with law?”

6. Admittedly, the vehicle involved in the accident is owned by the second respondent and the same is insured with the third respondent. It is not the case of the respondents that they have filed an appeal



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challenging the liability mulcted on the third respondent and the quantum of compensation awarded at by the Tribunal.

7. It is the specific case of the claimant that due to the accident, her right hand below the elbow portion was amputated. It is evident from Ex.P.2 – wound certificates that the claimant had sustained bone fractures in the right forearm. The Medical Board attached to the Government Headquarters Hospital, Virudhunagar, after examining the claimant, has issued disability certificate – Ex.C.1, whereunder it has been stated that the claimant had fore arm crush injury lead to amputation at the level of lower 1/3rd fore arm and fixed the disability at 65%. The Tribunal, considering the medical evidence available and following the settled legal position, has rightly adopted the multiplier method for ascertaining the compensation.

8. The main contention of the claimant is that she was working in Arul Shankar Fire Works Company, Sivakasi. The learned Counsel for the claimant would contend that the trial Court, without considering the nature of the work, has fixed the monthly income at lesser level ie., Rs.3,000/-p.m., and ought to have fixed the monthly income at



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Rs.7,500/-p.m. As rightly pointed out by the learned Counsel for the third respondent/Insurer, the claimant in the claim petition itself, has specifically stated that she was working in Arul Shankar Fire Works Company, prior to the accident and she was getting Rs.3,000/-p.m. Since the trial Court has accepted the case of the claimant with regard to her monthly salary, the contention of the appellant that the trial Court ought to have fixed at Rs.7,500/-p.m., is absolutely devoid of substance and the same is liable for rejection.

9. Regarding the age of the claimant, the case of the claimant is that she was aged 42 years at the time of accident and she has produced the copy of the Aadhar card, Bank Pass Book and also the PAN card. The Tribunal, by taking note of the particulars given in the PAN card, has rightly fixed the age of the claimant at 48 years and as such, the objection of the claimant that the trial Court ought to have fixed the age at 42 years on the basis of the Aadhar card and the Bank Pass Book cannot be accepted.



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10. The learned Counsel for the appellant would mainly contend that the trial Court has failed to add any amount towards future prospects and relied on the following judgments of the Hon'ble Supreme Court in support of his contention:

(i) ***Pappu Deo Yadav Vs Naresh Kumar and Others*** reported in **2020(5) CTC 926**;

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the ***Pranay Sethi*** principle).”

(ii) In ***Karthik Subramanian Vs. B.Sarath Babu and another*** reported in **2021(1) TN MAC 404 (SC)**;

4. Learned counsel for the appellant had relied upon the recent judgment of this Court in ***Erudhaya Priya v. State Express Transport Corporation Ltd*** - 2020 SCC OnLine SC



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601. The judgment took into consideration the earlier judgments including in **Pranay Sethi** (supra) and **Sandeep Khanduja v. Atul Dande** – (2017) 3 SCC 351. The latter judgment had opined that multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident. The present case being one of permanent disability of 40 per cent, it has been urged that the same principle should be applied in the present case while in fact nothing has been granted on account of future prospects.

5. In our view, this issue is no more res integra in view of **Sandeep Khanduja's case** (supra) and **Erudhaya Priya's case** (supra) opining that multiplier method has to be applied for future prospects and advancement in life and career.”

11. Considering the above legal position and taking note of the age of the claimant and by applying the legal dictum laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs.**



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Pranay Sethi and others reported in **2017(2) TNMAC 609**, the addition of 25% of the established income should be taken for future prospects, where the claimant was between the age of 40 to 50 years. The Tribunal, as per the judgment of the Hon'ble Supreme Court in **Smt.Sarlar Verma and Others Vs. Delhi Transport Corporation and another** reported in **2009(5) LW 561**, has rightly applied the multiplier of “13”. Considering the above, the claimant is entitled to get Rs.3,80,250/- (Rs.3000+750 (25%)=Rs.3750x12x13x65%) towards loss of income and permanent disability. Considering the nature of injuries and the consequent disability and the period of treatment, the claimant is entitled to get Rs. 25,000/- towards extra nourishment, Rs.1,00,000/- towards pain and suffering, Rs.50,000/- towards future medical expenses and Rs.500/- towards damages to clothes and articles and Rs.10,000/- towards transport expenses and Rs.20,000/- towards attendant charges and hence, the total compensation comes to Rs.5,85,750/- as follows:



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S. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of income and permanent disability	3,04,200/-	3,80,250/-	enhanced
2	For transport expenses	5,000/-	10,000/-	enhanced
3	For extra nourishment	10,000/-	25,000/-	enhanced
4	For pain and suffering	1,00,000/-	1,00,000/-	confirmed
5	For future medical expenses	50,000/-	50,000/-	confirmed
6	For damages to clothes and articles	500/-	500/-	confirmed
7	For attendant charges	----	Rs.20,000/-	granted
	Total	Rs.4,69,700/-	Rs.5,85,750/-	Rs.1,16,050/-

20. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.4,69,700 to Rs.5,85,750/- along with interest at 7.5%pa., and costs. The third respondent/Insurer is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.1 of 2019, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur less the amount already deposited, if any, within a period



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of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the appellant/claimant is permitted to withdraw the same on due application before the Tribunal. The parties are directed to bear their own costs.

24.03.2023

Index : Yes : No

Internet : Yes : No

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To

- 1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate Court,
Virudhunagr District at Srivilliputtur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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