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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1003 of 2024

Rogini

..Appellant

.vs.

1.Periyasamy

2.Sakthivel

3.The United India Insurance Company Ltd.,
D.No.256-E, Thirukumaran Towers,
First Floor, Kakkampalayam Main Road,
Mottur, Elampillai, Salem District

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order in MCOP No.698 of 2022, dated 01.09.2023, on the file of the Motor Accident Claims Tribunal/Special District Judge Court, Salem.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.R.Rajesh for R3



JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.698 of 2022, dated 01.09.2023 has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 13.03.2022, she was crossing in front of a temple at Salem-Ariyalur Main Road and at that time, the offending vehicle was driven in a rash and negligent manner and it hit the claimant due to which the claimant suffered the following injuries viz., RTA with fracture medial condyle right femur subtrochantric fracture right femur.

3.The disability of the claimant was fixed at Rs.20% by the Medical Board and the Medical Board found that the claimant was having pain at the fracture site and also difficulty in using the right knee. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the



accident had taken place only due to the rash and negligent driving on the part of the car driver. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.2,10,000/- with 7.5% interest. The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

5. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing on behalf of the appellant and Mr.R.Rajesh, learned counsel appearing on behalf of the 3rd respondent.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. The Tribunal has adopted per percentage method and has fixed the notional amount at Rs.4000/- per percentage. This amount is on the lower side and taking into consideration the judgment of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022, this Court is inclined to increase the same to Rs.7,000/- per percentage. Accordingly, the total compensation under the head of 'Disability' is fixed at Rs.1,40,000/- (20% x 7000).



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8. In the instant case, the claimant had undergone the treatment as an inpatient for nearly 15 days. However, the Tribunal has not granted any compensation towards attender charges and also towards extra nourishment. In view of the same, this Court is inclined to fix compensation of Rs.15,000/- towards attender charges and Rs.20,000/- towards extra nourishment.

9. The Tribunal has granted a sum of Rs.20,000/- towards pain and sufferings and the same is hereby enhanced to Rs.25,000/- Considering the fact that the claimant had suffered 20% permanent disability and was continuing to feel pain at the fracture site even at the time of assessment made by the Medical Board.

10. The Tribunal has not fixed any compensation under the head of 'Loss of Amenities' and hence, this Court fix the compensation of a sum of Rs.15,000/- under the head of 'Loss of Amenities'

11. The Tribunal has not fixed any compensation under the head of 'Loss of Income'. Considering the fact that the claimant was an agricultural coolie and would have been out of action for at least four months and the accident had



taken place in the year 2022, this Court is inclined to fix the notional monthly income at Rs.15,000/- and thus, the total compensation under the head of 'Loss of income' is fixed at Rs.60,000/- (Rs.15,000/- x 4 months).

12.The claimant underwent the following treatment:

- i.ORIF with long PFN right femur.
- ii.ORIF with narrow DCP plate and screws medial condyle right femur.

13.The claimant will definitely require future medical treatment also since plate and screws have been fixed and therefore, this Court is inclined to fix a sum of Rs.20,603/- towards future medical expenses.

14.Insofar as the medical bills are concerned, Ex.P5 was before the Tribunal and the Tribunal found that the medical expenses covered a sum of Rs.1,29,377/- and whereas, the claimant was given only a sum of Rs.1,10,000/- under this head. When the medical expenses are covered by valid bills, there is no reason to reduce the amount and the entire amount covered by the medical bills must be given. Therefore, the compensation under the head of medical expenses is fixed at Rs.1,29,377/-



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15. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	20% Disability (7000 x 20%)	1,40,000
2.	Pain and Sufferings	25,000
3.	Medical Expenses	1,29,377
4.	Attender Charges	15,000
5.	Loss of Amenities	15,000
6.	Extra Nourishment	20,000
7.	Loss of Income	60,000
8.	Future Medical Expenses	20,603
	Total	4,24,980
	Rounded off	4,25,000

16. The compensation awarded by the tribunal at Rs.2,10,000/- is enhanced to Rs.4,25,000/-. The third respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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17. In the result, the Civil Miscellaneous Appeal stands allowed in the above terms. No costs.

25.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
SSR

To

The Motor Accident Claims Tribunal/Special District Judge Court, Salem.



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N. ANAND VENKATESH., J

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