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C.M.A.No.2806 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Pronounced on : 18.03.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No. 2806 of 2016

and

C.M.P.No.20346 of 2016 and 9612 of 2017

Reliance General Insurance Co.Ltd.,
10th Cross, Thillai Nagar Main Road,
Trichy – 18.

...Appellant/second respondent

Vs.

1. R.RamaFirst respondent/petitioner
2. T.Senthil second respondent/first respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.04.2016 made in M.C.O.P.No.48 of 2015 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Perambalur.

For Appellant	:	Mr.S.Arun Kumar
For R1	:	Mr. Gopinath
For R2	:	Mr.Senthil



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the judgment and decree dated 27.04.2016 passed in MCOP No.48 of 2015 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Perambalur, questioning the quantum of compensation awarded by the said Tribunal.

2. The parties herein are referred to as per their ranking before the Tribunal.

3. The claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained by her in a road traffic accident that occurred on 11.10.2024.

4. The Tribunal, upon consideration of the oral and documentary evidence passed an award for a sum of Rs.9,93,158/- with interest at the rate of 7.5% per annum from the date of filing of the petition, fastening liability on the Insurance Company.

Though on behalf of respondents, counsels entered appearance, no



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argument was advance on behalf of them.

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5. Mr.S.Arun Kumar learned counsel appearing for the appellant submitted that the claimant suffered crush injuries over her left chest, left forearm and left wrist as per medical records.

6. It is further argued by the learned counsel for the appellant that the disability assessment made by Dr.Selavaraj (P.W7) is on the higher side. The income of the claimant was fixed at Rs.6,000/- and 1/3rd of amount was deducted for personal expenses from the monthly income and loss of earning capacity calculated is totally incorrect.

7. The following MCOPs arise out of the same accident. For MCOP Nos.46,48,49,56,57 and 59 of 2015, common evidences was recorded and common judgments was passed.

8. At trial,the claimant Rama was examined as P.W2. Ex.P3 to Ex.P.6 and Ex.P18 to Ex.P20 were marked. On the side of the appellant/Insurance Company, no witnesses was examined.

9. It has come on record that on 11.10.2014 at about 9:45 a.m, while



the claimant along with the claimants in other MCOPs were traveling in a tata city car bearing registration No. TN 49 AT 5529 from Sivankoil to Aranthagi, at a point near Kulakudikulam, Thiruchittrambalam, the driver of the said vehicle drove in a rash and negligent manner and the vehicle while turning, the van turned topsy turvy. Therefore, all the claimants' sustained injuries, is not in dispute.

10. It can be seen from the discharge summary (Ex.P4) issued by Kauvery Hospital, Trichy, that the claimant was admitted at Kauvery Hospital on 11.10.2014 and on account of the accident, she suffered the following injuries:

- (i) Crush injury left shoulder with muscle exposed
- (ii) Fracture Scapula Left
- (iii) Open fracture lateral 3rd clavical left side
- (iv) Deep laceration over left arm and forearm

It could be seen from the discharge summary (Ex.P4), that the claimant had undergone surgeries in respect of left shoulder and arm on 13.10.2014, 24.10.2014 and 30.10.2014.

11. It is the evidence of Dr.Selvaraj (P.W7) that due to the said



fractures and injuries, the claimant cannot lift her left hand and she cannot do her normal work. The claimant's disability is fixed as 70%. The trial Court has concluded that it is not possible for the claimant to lead a normal life due to the injuries suffered and chose to adopt the multiplier method. The Hon'ble Apex Court, in ***Rajkumar vs Ajay Kumar and Another, 2011, 1 SCC 343***, has given certain guidelines for assessing the loss of future earning capacity

"19.(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant of who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent or permanent disability. The loss of earning capacity is something



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that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

12. In this case, the claimant is said to be a tailor. From the perusal of discharge summary (Ex.P4) and medical records (Ex.P5) coupled with the evidence of Dr.Selvaraj (P.W7), it appears that the claimant cannot do her routine work as well as the work of tailor as she did before. Therefore, taking into account of the above said injuries, the claimant's functional disability is taken as 50% and the Tribunal has fixed notional income of Rs.6,000/-. As per the medical records, the age of the claimant is fixed as 40 years.

13. As per the law laid down in ***SMT.SARALA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (2) TN MAC 1 (SC)]***, the multiplier to be adopted for the age group of persons the relevant multiplier to be adopted is 15. For loss of earning power based on the above said details, the following formula emerges:



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$$6000 * 50\% * 15 * 12 = 5,40,000/-$$

As regards the other heads, the amount awarded by the Tribunal appears to be reasonable and needs no interference.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1	Loss of future income	7,02,000/-	5,40,000/-	reduced
2	Loss of medical expenses	2,71,158 /-	2,71,158 /-	confirmed
3	For transportation	10,000/-	10,000/-	confirmed
4	Attender Charges	10,000/-	10,000/-	confirmed
		9,93,158/-	8,31,158/-	

Rounded off to Rs.8,31,000/-.

14. In the result,

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

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

Rs.9,93,158/- to Rs.8,31,000/-

(iii) The appellant/Insurance Company is directed to deposit the compensation amount i.e., **Rs.8,31,000/-** (less the amount already deposited



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if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation to the credit of M.C.O.P.No.48 of 2015 on the file of Motor Accident Claims Tribunal / Chief Judicial Magistrate Court , Perambalur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the first respondent/claimant is at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal.

18.03.2024

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Index: Yes/No
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Neutral Citation Case:Yes/No



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To

1.The Judge,
Motor Accidents Claims Tribunal,
III Additional District Court,
Tiruvallur,
Poonamallee.

2.The Section Officer,
VR Section,
Madras High Court.



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R.KALAIMATHI,J.

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