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C.M.A.No.874 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.874 of 2022

Kaliammal

... Appellant

Vs.

1. M. P. Shanmugha Raja

2. The United India Insurance Company Limited,
D.No.14/1-77B, Salem Main Road,
Puduchampalli, Raman Nagar Post,
Mettur Dam, Salem District – 636 401.

3. The Managing Director,
Tamil nadu State Transport Corporation,
Periya Milaguparai,
Kumbakonam, Trichy.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and decree dated 22.07.2021 in MCOP No.548 of 2018 on the file of the Motor Accidents Claims Tribunal, Sessions Fast Track Mahila Court at Namakkal with interest @ 9% and cost by allowing this appeal.

For Appellant : Mr. C. Ramaraj

For R1 & R3 : Not ready in notice

For R2 : Mr. J. Michael Visuvasam



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the injured claimant seeking enhancement of compensation against the Award passed in M.C.O.P.No.548 of 2018, dated 22.07.2021, on the file of the Motor Accidents Claim Tribunal, Sessions (Fast Track Mahila) Court, Namakkal.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. According to the petitioner, she has suffered permanent disability due to the accident, that had taken place on 20.08.2017 at about 4.30 pm while she was travelling in a Transport Corporation Bus, bearing Registration No.TN 45 N 3342 which was hit behind the goods vehicle bearing Registration No.KA 51/C-2456 belongs to the first respondent. Originally, she has come forward with the claim petition seeking compensation of Rs.30,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, the first respondent, owner of the goods



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vehicle remained exparte. The second respondent - Insurance Company of the lorry contested the claim and disputed the manner in which the accident had taken place and negligence, age, and also income of the injured. Similarly, the State Transport Corporation also contested the claim and stated that the driver of the lorry belongs to the first respondent has negligently driven the vehicle which caused the accident.

5. After considering the evidence placed on record the Tribunal has held that the driver of the lorry his belongs to the first respondent has negligently driven it and dashed on the State Transport Corporation bus, which resulted in causing severe injuries to the petitioner thereby, the first and second respondents are liable to compensate the claimant. The Tribunal has also quantified the compensation and awarded sum of Rs.8,61,250/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has approached this Court seeking enhancement of compensation.

7. The learned counsel for the claimant submitted that the notional



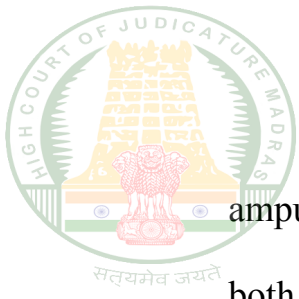
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income fixed by the Tribunal for awarding compensation under the head the loss of income is on the lower side and the multiplier applied in this case is also not proper. He has also stated that the compensation awarded under the various heads are also on the lower side. Hence, prays to enhance the same.

8. The learned counsel for the Insurance Company submitted that the Tribunal, after considering the age and nature of injury has rightly fixed the notional income as well as awarded compensation under various heads also. He fairly concedes that the compensation under the head future prospects has not been awarded in this case and the same is applicable to the claimant herein.

9. I have considered the submissions made on both sides and also perused the records available.

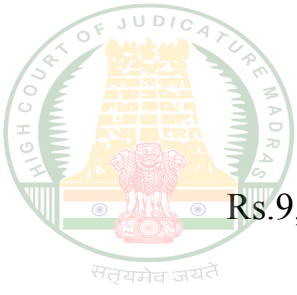
10. The Tribunal based on the Disability Certificate issued by the Medical Board marked as Ex.C1 has accepted the case of the claimant that she has suffered functional permanent disability and fixed the loss of earning capacity to the extent of 70%. The claimant has not only suffered



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amputation of left leg below knee and also suffered multiple fractures on her both legs. There is no dispute regarding the percentage of loss of earning capacity. The Tribunal after fixing the percentage of loss of earning capacity, fixed the notional income of the injured at Rs.5,000/- per month. Admittedly, the accident had taken place in the year 2017 i.e., 20.08.2017 the age of the injured has been fixed by the Tribunal as 56 years. Though the claimant has stated that she is aged about 52 years based on the Aadhar Card, the Tribunal has fixed the age of the injured as 56 years and this Court finds the same is reasonable and the same is hereby confirmed.

11. The Tribunal has fixed the notional income of the injured at Rs.5,000/- per month and by considering the age of the claimant and also the date of accident and nature and avocation claimed by her, this Court is inclined to fix a sum of Rs.13,000/- per month as the notional income of the injured would be appropriate. The claimant has also entitled for 10% of income as the future prospects. The Tribunal has properly applied multiplier as '8' by considering the age of the injured claimant. Accordingly, the following calculations have been made to calculate the loss of earning capacity: $[13000 + 1300 (10\% \text{ of } 13000)] 14300 \times 12 \times 8 \times 70\% =$



Rs.9,60,960/-].

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12. The Tribunal has also awarded compensation under the head loss of income for the period of 10 months i.e., the period of temporary disablement and the same is not applicable for the present case since the compensation awarded to the claimant under the head loss of earning capacity. Hence the compensation awarded under the head loss of income during the period of treatment is hereby cancelled.

13. The Tribunal has awarded compensation of Rs.20,000/- under the head Transport to Hospital and this Court is of the view the same is meager and the same is hereby enhanced to Rs.30,000/-. The Tribunal has not awarded compensation under the head attender charges during the treatment period and this Court is inclined to award 6 months income under the head attender charges and accordingly a sum of Rs.78,000/- (13000 x 6) is awarded under the head attender charges. The Tribunal has also awarded a sum of Rs.10,000/- under the head extra nourishment and this Court is inclined to enhance the same by Rs.25,000/-. The Tribunal has awarded compensation under the head medical expenses after rejecting some of the



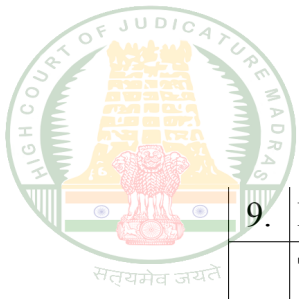
medical bills by giving cogent reasons, hence, I am not inclined to interfere with the said finding and the same is hereby confirmed.

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14. The Tribunal has awarded a sum of Rs.50,000/- under the head pain and sufferings and this Court finds the same requires enhancement. Accordingly the same is enhanced to Rs.75,000/-. The Tribunal has not awarded compensation under the head loss of amenities and this Court is inclined to award a sum of Rs.20,000/- under the head loss of amenities.

15. Thus the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning power	Rs.3,36,000/-	Rs.9,60,960/-	Enhanced
2.	Loss of earning for 10 months	Rs.50,000/-	---	Set aside
3.	Transport to Hospital	Rs.20,000/-	Rs.30,000/-	Enhanced
4.	Extra Nourishment	Rs.10,000/-	Rs.25,000/-	Enhanced
5.	Damages to clothings	Rs.2,000/-	Rs.2,000/-	Confirmed
6.	Medical Expenses	Rs.3,93,250/-	Rs.3,93,250/-	Confirmed
7.	Pain and Sufferings	Rs.50,000/-	Rs.75,000/-	Enhanced
8.	Attender Charges	---	Rs.78,000/-	Granted



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9.	Loss of Amenities	---	Rs.20,000/-	Granted
	Total	Rs.8,61,250/-	Rs.15,84,210/-	Enhanced by Rs.7,22,960/-

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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.8,61,250/- is hereby enhanced to Rs.15,84,210/- [Rupees Fifteen Lakhs Eighty Four Thousand Two Hundred and Ten only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period if any. The Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.548 of 2018, on the file of the Motor Accidents Claims Tribunal, Sessions (Fast Track Mahila) Court, Namakkal and thereafter, Insurance Company is permitted to withdraw the same from the first respondent. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount by directly credited into the Savings Bank Account of the claimant. Since this Court has enhanced



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the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

29.11.2024

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Sessions Judge,
Fast Track Mahila Court,
Motor Accidents Claims Tribunal,
Namakkal.

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

K.RAJASEKAR,J.,

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