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C.M.A.No.755 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.755 of 2024

D.Eswari

... Appellant

Vs.

1. Mr.M.Yuvaraj
2. The Oriental Insurance Co. Ltd.,
Motor Third Party Claims Hub,
Oriental House, 2nd Floor,
Prakasam Salai, Broadway,
Chennai 600 104.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the order made in M.C.O.P.No3786 of 2021, dated 21.09.2023, in the Court of the Special Sub Judge No.II (Court of Small Causes at Chennai).

For Appellant : Mr.K.Balaji
For R2 : Mr.S.Senthil Kumar

JUDGEMENT



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This Civil Miscellaneous Appeal has been filed by the appellant/claimant, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Court of the Special Sub Judge No.II, (Court of Small Causes, Chennai) in M.C.O.P.No.3786 of 2021, dated 21.09.2023.

2. On 13.08.2021 at about 20.30 hours, when the appellant/claimant was travelling as a pillion rider in a motorcycle bearing Reg.No.TN 19 E 7448, he was hit by a lorry bearing Reg.No.TN 02 R 7475, which was driven by its driver in a rash and negligent manner. Due to the impact, the appellant/claimant sustained multiple grievous injuries all over her body. Hence, the appellant/claimant filed a Claim Petition before the Tribunal claiming a sum of Rs. 47,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.12,69,000/- towards compensation to the appellant. Being not satisfied with the same, the appellant has preferred the present appeal.

4. The learned counsel for the appellant would submit that, due to the



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accident, the appellant sustained crush injury over left arm and forearm exposing bone and Doctor advised for amputation. Further, he submitted that the Medical Board assessed disability at 80% and the notional income fixed by the Tribunal at Rs.9,000/- per month. However, at the time of cross-examination, the appellant stated that she was earning a sum of Rs.12,000/- per month. Hence, the learned counsel for the appellant requested this Court to fix the notional income of the appellant at Rs.12,000/-, which is just and reasonable. Accordingly, he prayed for appropriate enhancement in favour of the appellant.

5. Per contra, the learned counsel for the second respondent would submit, that in the claim statement, the notional income of the appellant/claimant was stated at Rs.8,000/- per month. Considering the nature of injuries sustained by the appellant, the Tribunal had fixed the notional income of the appellant/claimant at Rs.9,000/- per month, would be just and reasonable, which requires no interference of this Court. Further, he fairly submitted that, any reasonable amount may be fixed by this Court in respect of other heads.

6. Heard the learned counsel for the appellant and the learned



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counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The fact and the manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The main challenge in this appeal is only with regard to the quantum of compensation awarded by the Tribunal. The main grievance of the appellant/claimant is that the Tribunal fixed the notional income of the appellant at Rs.8,000/-, which is on the lower side. Further, the learned counsel for the appellant submitted that, he has inadvertently stated in the claim petition, that the appellant was earning a sum of Rs.8,000/- per month. Hence, he requested this Court to re-determine the notional income of the appellant at Rs.9,000/- per month.

8. On considering the submissions made by the learned counsel on both sides and perused the materials available on record. This Court is of the view, that due to the injuries, the appellant/claimant sustained grievous injuries in her left hand and the appellant has suppose to remove her left hand. However, she did not take any steps to amputate her hand, and the performance of the appellant is getting reduced. Today, i.e., 25.03.2024, the claimant appeared before this Court and this Court noticed that the appellant/claimant is



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maintaining her left hand with the other hand except that she cannot do anything, and she cannot able to go for any employment, though the disability was assessed at 80%. This Court, feels that the functional disability would be 100%, even if her hand amputated, she can do some work, without amputation she cannot do any other works. Considering the nature of injuries sustained by the claimant, this Court is inclined to take functional disability at 100% by fixing the notional income of the appellant at Rs.9,000/- per month. Thus, by fixing the notional income of the appellant/claimant at Rs.9,000/-; adding future prospects at 10%, as has been held by the Constitution Bench of the Apex Court, the total income per month is quantified at Rs.9,900/-; adopting the multiplier of '11' (since the appellant was aged about 51 years), the compensation towards "Loss of earning capacity" is worked as Rs.9,900/- x 12 x 11 x (100%) = Rs.13,06,800/-.

9. Consequently, the sum of **Rs.10,45,500/-** awarded by the Tribunal under the head of "Loss of earning capacity" is hereby modified and enhanced to **Rs.13,06,800/-**.

10. This Court finds that a sum of Rs.50,000/- towards "pain and



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suffering”, and a sum of Rs.15,000/- towards “loss of amenities” awarded by the Tribunal, are on the lower side. Therefore, this Court is inclined to award a sum of Rs.75,000/- towards “pain and suffering” and a sum of Rs.1,00,000/- towards “loss of amenities” respectively.

11. Since this Court has taken the functional disability at 100% for the purpose of determining the compensation to the appellant, hence, the amount awarded under the head “loss of income” is liable to be set-aside and accordingly the same is set-aside by this Court.

12. A sum of Rs.15,000/- awarded by the Tribunal under the head “extra nourishment”, which is on the lower side, therefore, this Court is inclined to award a sum of Rs.40,000/- under the said head.

13. This Court finds that a sum of Rs.25,000/- awarded by the Tribunal under the head “attender charges” is modified and enhanced to a sum of Rs.75,000/-, since the appellant need someone to assist her atleast till her amputation of left hand. Further, the Tribunal has failed to award any amount under the head “future medical expenses”, hence, this Court is inclined to award a sum of Rs.1,50,000/-, to amputate her left hand.



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14. Insofar as the compensation awarded by the Tribunal under various heads viz., medical expenses and transportation are concerned, this Court finds the same to be just and proper and are hereby confirmed.

15. Thus, the total compensation payable to the appellant/claimant under various Heads is modified hereunder:-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning capacity	10,45,500/-	13,06,800/- (enhanced)
Pain and suffering	50,000/-	75,000/- (enhanced)
Medical expenses	63,500/-	63,500/-
Attendant charges	25,000/-	75,000/- (enhanced)
Loss of income	45,000/-	Nil
Transportation	10,000/-	10,000/-
Loss of amenities	15,000/-	1,00,000/- (enhanced)
Extra nourishment	15,000/-	40,000/- (enhanced)
Future medical expenses	Nil	1,50,000/- (awarded)
Total	12,69,000/-	18,25,300/-

16. Consequently, the total compensation amount of **Rs.12,69,000/-**



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awarded by the Tribunal is hereby modified and enhanced to Rs.18,25,300/-

which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

17. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5 % p.a., and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the second respondent/Insurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.



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WEB COPY iv) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

25.03.2024

Index : Yes / No
NCC : Yes / No
jd

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge No.II, Court of Small Causes
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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