



Civil Miscellaneous Appeal No.1771 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No .1771 of 2023

Kanagavalli

... Appellant /Petitioner

Vs.

1. Baskaran

2. The Divisional Manager,
New India Assurance Co. Ltd,
DO No.30, JN Street,
Pondicherry

Respondents /Respondents

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.343 of 2016 dated 28.09.2021 on the file of the Motor Accident Claims Tribunal (2nd Additional Sub Judge, Cuddalore).

For Appellant : Mrs.Ramya V Rao

For Respondents : M/s.R.Sreevidhya for R2
R1 - Exparte



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant challenging the award passed in MCOP No.343 of 2016 dated 28.09.2021 on the file of the Motor Accident Claims Tribunal (2nd Additional Sub Judge, Cuddalore) and she seeks for enhancement of compensation.

2. Heard Mrs.Ramya V Rao, learned counsel for the petitioner and M/s.R.Sreevidhya, learned counsel for 2nd respondent.

3. The petitioner, who was aged about 39 years was traveling in an Auto Rickshaw and due to the negligence on the part of the driver of the Auto Rickshaw, the Auto fell into a ditch and as a result, the petitioner sustained fracture in her right hand. In the light of this injury, she under went two surgeries and the medical board had assessed the disability at 30%.It is under these circumstances, the appellant filed a claim petition before the Tribunal.

4. The Tribunal considering the facts and circumstances of the case and on appreciation of evidence, fixed the compensation under various heads as follows :-

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
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1.	Loss of income due to 40% permanent disability	1,20,000/-
2.	Pain and sufferings, mental agony	60,000/-
3.	For Loss of amenities	30,000/-
4.	Extra Nourishment	12,000/-
5.	Attender Charges	5,800/-
6.	Transport expenses	5,000/-
7.	For Temporary loss of Income (Rs.9,000x9)	81,000/-
8.	Medical expenses	29,203/-
9.	Future Medical Expenses	5,000/-
	Total	3,48,003/-

5. The learned counsel for Appellant submitted that the appellant was a agricultural coolie and a vegetable vendor. She sustained isolated fracture in the middle of the shaft radius bone. In view of the same, she under went two surgeries at Mahatma Gandhi Hospital, Pondicherry, which is substantiated by Ex.P4 and Ex.P9 marked before the Tribunal. The learned counsel submitted that the appellant was treated as a inpatient for a total period of 29 days and even thereafter, the appellant was taking further treatment for nearly seven months. In view of the same, the appellant was not able to carry out her activity as a coolie and there was functional disability which was caused due to the injuries sustained by the appellant. It was pointed out that the Medical Board had merely assessed the disability at 30% without explaining as to whether this disability is permanent. In view of the same, it was pointed out that the



Tribunal on considering the permanent disability suffered by the petitioner ought to have adopted the multiplier method while fixing the compensation under the head of disability. Instead, the Tribunal had fixed the compensation by calculating per percentage at the rate of Rs.4,000/-.

6. The learned counsel for respondent insurance company submitted that the Tribunal has taken into consideration the claim that were made by the appellant and has granted compensation almost under nine heads. It was further contended that just and fair compensation has been fixed by the Tribunal and the same does not require the interference of this Court.

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

8. The petitioner had sustained injury in the right forearm and the right leg. As a result, she developed a severe pain and she was admitted at Mahatma Gandhi Hospital, Puducherry. It was found that the petitioner had sustained isolated fracture in the middle of the shaft of the right radius. In view of the same, an operation was conducted on 15.12.2015 and the plate was fixed. Thereafter, the plate was taken away on 19.07.2016.



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9. The Tribunal on considering the claim made by the appellant for compensation under various heads, has assigned proper reasons while fixing the compensation. Insofar as the compensation fixed for disability, there is no question of applying multiplier method unless it is established that the petitioner has sustained functional disability due to the accident. Since the same has not been established, the Tribunal has rightly calculated the disability at the rate of Rs.4,000/- per percentage, considering the fact that the accident had taken place during the year 2015.

10. This Court does not find any ground to interfere with the award passed by the Tribunal and this Civil Miscellaneous appeal is dismissed. No costs.

02.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

Motor Accident Claims Tribunal (2nd Additional Sub Judge, Cuddalore).

N.ANAND VENKATESH, J.

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