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C.M.A. No. 3090 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3090 of 2021

Mallika

... Appellant / Petitioner

Vs.

1. S. Banumathi

2. National Insurance Co. Ltd.,
Motor TP Hub, Regina Mansion,
No.46, 3rd Floor, Moore Street,
Chennai - 600 001.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.03.2021 passed in M.C.O.P. No. 2211 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s. K. Varadha Kamaraj

For R1 : Dispensed With

For R2 : M/s. J. Michael Visuwasam



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in passed in M.C.O.P. No. 2211 of 2017, dated 12.03.2021 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 28.01.2017, at about 13:50 hours, while the claimant was standing near the Flower Market Gate, E-road, Koyambedu, Chennai, a car bearing Registration No.TN-10-S-8733 proceeding from east to west direction, driven by the first respondent in a rash and negligent manner, hit the claimant, thereby causing grievous injuries to the claimant. A criminal case was registered in Cr.No.18/KM1/2017 on the file of Sub Inspector of Police, K10, Koyambedu Traffic Investigation Police Station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.10,00,000/- under section 166 of the Motor Vehicles Act.



4. The first respondent, who is the driver cum owner of the car bearing Registration No.TN-10-S-8733 has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the said car has filed a counter and denied the manner in which the accident has taken place. The insurance company also disputed the age, avocation, income, injuries and disability sustained by the claimant and further contended that the compensation claimant is excessive.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.8 and Ex.C.1 – disability certificate of the claimant issued by the Medical Board were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the rash and negligence on the part of the first respondent is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.2,04,200/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part



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of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.

7. Aggrieved over the quantum of compensation, the claimant has filed this appeal on the ground that the compensation awarded under various heads are on the lower side. The second respondent – insurance company has not preferred any appeal against the liability fixed on them.

8. The learned counsel for the claimant submitted that the claimant was subjected to Medical Board examination and the disability of the claimant is also assessed as 26% but the Tribunal has not properly awarded compensation under the head disability. He also further submitted that the compensation awarded under the head loss of income during the treatment period and other heads by the Tribunal is also very meager, hence prays to enhance the compensation.

9. Per contra, the learned counsel for the insurance company submitted that based on the evidence placed on record, the Tribunal has awarded a just compensation, hence prays to confirm the same.



10. Heard the submissions made on both sides and perused the materials available on record:

11. On perusal of the medical records, Ex.P.3 – wound certificate and Ex.P.4 – discharge summary of the claimant shows that she has sustained fracture shaft of tibia right leg and Ex.C.1- disability certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai shows that the claimant has sustained 26 % of permanent disability. The Tribunal after considering the above injuries treated the disability is not a functional disability, hence granted compensation by adopting percentage method and awarded Rs.3,000/- per percentage of disability. This Court is of the view that though the Tribunal has rightly concluded that the claimant has not sustained functional disability. However, as per the norms followed by this Court that the accident cases taken place from the year 2016 onwards, Rs.5,000/- per percentage of disability is being awarded. Accordingly, the compensation awarded under the head disability is modified by adopting Rs.5,000/- per percentage of disability and thereby inclined to award Rs.1,30,000/- (Rs.5,000/- X 26% disability).



12. It is claimed by the claimant that she is a Flower vendor and was earning Rs.700/- per day, but her avocation has not been established before the Tribunal, hence the Tribunal has fixed monthly notional income of Rs.6,000/- and treated the injuries sustained by the claimant might have restricted from continuing her work for two months, hence awarded two months loss of income of Rs.12,000/- (Rs.6,000/- X 2) during her disablement period. This Court is of the view that since the claimant is a self employed individual, the monthly notional income fixed by the Tribunal is on the lower side, hence this Court is inclined to modify the monthly notional income to Rs.10,000/-. Considering the injuries more particularly fracture shaft of tibia right leg, this Court is also inclined to modify the disablement period of the claimant as three months, hence the loss of income during the treatment period is modified to Rs.30,000/- (Rs.10,000/- X 3 months).

13. The Tribunal after considering the various medical ailments faced by her has granted Rs.20,000/- under the head loss of future prospectus, this Court is of the view that the the claimant herein is a women aged about 44 years, hence the compensation granted under the head future



prospectus is hereby modified as loss of amenities and Rs.30,000/- is hereby awarded. Whereas other heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.

14. Accordingly, the award passed 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 reduced
1.	Disability	78,000/-	1,30,000/-	Enhanced
2.	Pain and Sufferings	20,000/-	20,000/-	Confirmed
3.	Transportation	3,000/-	3,000/-	Confirmed
4.	Medical expenses	59,663/-	59,663/-	Confirmed
5.	Extra Nourishment	10,000/-	10,000/-	Confirmed
6.	Attender Charges	1,500/-	1,500/-	Confirmed
7.	Loss of earning (during the treatment period)	12,000/-	30,000/-	Enhanced
8.	Loss of future prospectus/ (modified to (Loss of amenities)	20,000/-	30,000/-	Enhanced
	Total Compensation	2,04,200/- (round off)	2,84,163/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,04,200/- is hereby enhanced to **Rs.2,84,163/- [Rupees Two Lakh Eighty Four Thousand One Hundred and Sixty Three only]** together along with interest at the



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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 second respondent – Insurance company is directed to deposit the amount awarded 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.2211 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

23.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

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



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K. RAJASEKAR, J.

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