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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 18.04.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**CMA No2581 of 2024**

V.K.Geetha

.. Appellant

.Vs.

1.Thavamani

2.The United India Insurance Co., Ltd,  
No.22-B, P.P.Sundaram Iyer Street  
Dharmapuri - 636 701.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2156 of 2019, dated 4.10.2021, on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mrs.I.Malar [R2]

**JUDGMENT**

The appellant/claimant, not being satisfied with the quantum of compensation fixed by the Tribunal, has filed the present appeal seeking for enhancement of compensation against the award passed by the Motor Accident



Claims Tribunal/Special Subordinate Judge No.II, Salem, in M.C.O.P.No.2156 of 2019, dated 04.10.2021.

2.The case of the claimant is that on 12.10.2018, the claimant was riding a two wheeler in the N.H.Road and at 3.00 pm, when the vehicle reached near Spartan School, the offending vehicle owned by the 1st respondent was driven in a rash and negligent manner and as a result, it dashed on the two wheeler and the claimant fell down from the vehicle and sustained the following injuries:

"Closed Fracture of distal 1/3rd of both bones of right fore arm closed fracture of neck and shaft of right femur laceration over right ear, right side of forearm and 1" web space of left hand. Head injury : Scalp injury Gypodensity - Left basal frontalobe".

3.The Medical Board assessed the disability at 35% and observed as follows:

"Debridement Primary Suturing and Nailing Femur and Plating Forearm she cannot Squat and Sit cross Legged, Difficulty in walking in slopes climbing stairs pain in knee and hip difficult in ambulation and combing using right forearm permanent"

4.It is under these circumstances, the claimant filed the claim petition before the Tribunal seeking for compensation.



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5.The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation of Rs.5,98,694/- in the following manner:

| Sl. No | Compensation awarded under the head           | Amount in Rs.     |
|--------|-----------------------------------------------|-------------------|
| 1.     | Permanent Disability (35X5000)                | 1,75,000/-        |
| 2.     | Pain and sufferings                           | 35,000/-          |
| 3.     | Loss of amenities                             | 35,000/-          |
| 4.     | Loss of income during treatment [Rs.10,000x6] | 60,000/-          |
| 5.     | Transportation charges                        | 25,000/-          |
| 6.     | Nourishment charges                           | 25,000/-          |
| 7.     | Attendant charges (for 9 days)                | 9,000/-           |
| 8.     | Damage to cloths                              | 1,000/-           |
| 9.     | Medical bills                                 | 2,33,694/-        |
|        | Total                                         | <b>5,98,694/-</b> |

6.The above compensation was directed to be paid with interest at the rate of 6% p.a.

7.The claimant, being aggrieved by the compensation fixed by the Tribunal, has filed this appeal before this Court seeking for enhancement.



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8. Heard Mr.T.S.Arthanareeswaran, learned counsel for the appellant and Mrs.I.Malar, learned counsel for the 2nd respondent.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record. This Court had also carefully gone through the award passed by the Tribunal.

10. The main ground that was urged before this Court is with regard to the notional income that was taken while calculating the disability at Rs.5,000/- per percentage. In the instant case, the accident had taken place in the year 2018 and considering the judgment of the Division Bench of this Court in CMA No.3334 of 2021, by order dated 15.6.2022, [Future General India Insurance Company Limited v. Manivannan and others] the notional income per percentage can be fixed at Rs.7,000/- per percentage. The same can be applied to the facts of the present case also. In doing so, the total compensation under the head 'permanent disability' works out to Rs.2,45,000/- [7,000 \* 35].

11. Apart from the above, this Court is also inclined to interfere with the compensation that was fixed under the head of loss of earning. The claimant was a beautician and she was out of action for nearly six months. Hence, considering the age of the claimant and also the avocation, the monthly income



can be fixed at Rs.12,500/-. Hence, the compensation under the head of 'loss of earning' can be fixed at  $\text{Rs.}12500 \times 6 = 75,000/-$ .

12. The compensation that has been fixed under the other heads sounds reasonable and it does not require the interference of this Court.

13. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

| <b>Sl. No</b> | <b>Compensation awarded under the head</b>      | <b>Amount in Rs.</b> |
|---------------|-------------------------------------------------|----------------------|
| 1.            | Permanent Disability per percentage [35 x 7000] | 2,45,000/-           |
| 2.            | Pain and sufferings                             | 35,000/-             |
| 3.            | Loss of amenities                               | 35,000/-             |
| 4.            | Loss of income during treatment [Rs.12,500 * 6] | 75,000/-             |
| 5.            | Transportation charges                          | 25,000/-             |
| 6.            | Nourishment charges                             | 25,000/-             |
| 7.            | Attendant charges (for 9 days)                  | 9,000/-              |
| 8.            | Damage to cloths                                | 1,000/-              |
| 9.            | Medical bills                                   | 2,33,694/-           |
|               | <b>Total</b>                                    | <b>6,83,694/-</b>    |



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14.The compensation awarded by the Tribunal at Rs.5,98,694/- is enhanced to Rs.6,83,694/-. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment.The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered. This appeal is accordingly allowed in the above terms. No costs.

**18.04.2024**

Index : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral citation : Yes/No  
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To

- 1.The United India Insurance Co., Ltd,  
No.22-B, P.P.Sundaram Iyer Street  
Dharmapuri - 636 701.
- 2.Motor Accident Claims Tribunal  
Special Subordinate Judge No.II  
Salem.



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**N. ANAND VENKATESH., J**

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**CMA No.2581 of 2022**



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