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CMA.No.19 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.19 of 2024

Gomathi

... Appellant

-Vs-

1.Manikandasamy

2.M/s.The Oriental Insurance Co.Ltd.,
Divisional Office (HUB),
Mettur Road,
Parimalam Complex,
Erode-1.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.07.2022 made in MCOP.No.40 of 2020 on the file of the Motor Accident Claims Tribunal and Special Sub Court at Erode.

For Appellant	: Mr.S.P.Yuaraj
For R1	: No appearance
For R2	: Mr.R.Sivakumar



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JUDGMENT

Challenging the quantum of compensation awarded by the Tribunal in MCOP.No.40 of 2020, the appellant/claimant has filed the present appeal.

2.The appellant is the claimant in MCOP.No.40 of 2022 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Erode. She filed the above said claim petition, claiming a sum of **Rs.45,00,000/-** as compensation for the injuries suffered by her in an accident that took place on 04.07.2019.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the 1st respondent/owner of the vehicle and directed the 2nd respondent-Insurance Company to pay a sum of **Rs.17,59,000/-** as compensation to the appellant.



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4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that the accident occurred on 04.07.2019 and that the appellant was 49 years old at the time of the accident. Due to the said accident, the appellant sustained bone fractures and grievous injuries. The Medical Board determined her disability at 70% and the nature of disability as partial permanent disability. The learned counsel would contend that though the Medical Board determined the partial permanent disability of the appellant at 70%, the Tribunal awarded compensation by applying the percentage method instead of applying multiplier method. Further, he also submitted that the appellant is suffering from the after effects of the accident and has been taking treatment till date. However, no amount of compensation was awarded towards the future medical expenses. Hence, he would contend that the Award of the Tribunal has to be redetermined.



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6. On the other hand, the learned counsel for the second respondent/Insurance Company would submit that the compensation awarded by the Tribunal is just and reasonable and that the same may be confirmed.

7. Considered the submissions of the learned counsel for the appellant and the second respondent and perused the materials placed on record.

8. When the Medical Board had determined the disability of the appellant at 70%, the Court below should have applied the multiplier method and awarded compensation by taking at least $\frac{1}{3}^{\text{rd}}$ of the percentage of disability as determined by the Medical Board. However, in the present case instead of applying the multiplier method, the Court below had opted to apply the percentage method and awarded a sum of Rs.2.5 Lakhs towards 'Pain and Sufferings' and further awarded Rs.5,000/- for every percentage of disability and accordingly, awarded a



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sum of Rs.3.5 Lakhs towards 'permanent disability and loss of earning power'. Therefore, it is seen that the Tribunal has awarded compensation by applying the percentage method only with regard to the heads; (1) pain and suffering and (2) permanent disability and loss of earning power. Therefore, this Court is inclined to award compensation to the appellant by applying the percentage method.

9.The Tribunal had awarded a sum of Rs.5,000/- for every percentage of disability for an accident which occurred in the year 2019, which is on the lower side. Hence, this Court now awards a sum of Rs.7,000/- for every percentage of disability and accordingly, awards a sum of Rs.4,90,000/- towards 'Permanent Disability and loss of Earning Power'. Considering the nature of injuries suffered by the appellant, this Court awards a sum of Rs.1,00,000/- towards the future medical expenses. Further, the Tribunal had not awarded any compensation towards the loss of amenities. Therefore, this Court now awards a sum of Rs.50,000/- towards the loss of amenities.



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10.The compensation awarded by the Tribunal under other heads of compensation are just and reasonable and accordingly, the same stands confirmed. The Award of the Tribunal is redetermined as below;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earnings	1,20,000/-	1,20,000/-	Confirmed
2.	Transport to Hospital	35,000/-	35,000/-	Confirmed
3.	Extra Nourishment	25,000/-	25,000/-	Confirmed
4.	Attender Charges	50,000/-	50,000/-	Confirmed
5.	Future Medical Expenses	NIL	1,00,000/-	Enhanced
6.	Damages for Clothes and Articles	5,000/-	5,000/-	Confirmed
7.	Medical Expenses	9,24,000/-	9,24,000/-	Confirmed
8.	Pain and Sufferings	2,50,000/-	2,50,000/-	Confirmed
9.	Permanent Disability & Loss of Earning Power	3,50,000	4,90,000/-	Enhanced
10	Loss of Amenities	Nil	50,000/-	Enhanced



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	Grand Total	17,59,000/-	20,49,000/-	Enhanced by
			-	2,90,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,59,000/- is hereby enhanced to Rs.20,49,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-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. 40 of 2020** on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode. On such deposit being made, the Tribunal is directed to transfer the Award amount, directly to the Bank account of the Appellant/Claimant through RTGS, within a period of **three weeks**. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving



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interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

08.03.2024

Tsg

To

- 1.Motor Accident Claims Tribunal,
Special Sub Court, Erode.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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KRISHNAN RAMASAMY, J.,

Tsg

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