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C.M.A. No.1728 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1728 of 2022

Ammayee Ammal

.... Appellant

vs.

1. D. Manonmani

2. The General Manager,
IFFCO TOKIO General Insurance Company Ltd.,
No.306A, 1st Floor,
Katpadi Main Road,
Viruthampattu,
Melur.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Fair and Final Order dated 05.07.2013 in M.C.O.P. No.156 of 2011 on the file of the learned Motor Accident Claims Tribunal and the Chief Judicial Magistrate, Thiruvannamalai.

For Appellant

: Mr.J. Lenin

For Respondents

: R1 – No appearance
Mr.M. Jayaraj for R2



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JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation.

2. Heard Mr.J. Lenin, learned counsel for the appellant / claimant and Mr.Jayaraj, learned counsel for the 2nd respondent / Insurance Company.

3. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.1,40,000/- for the injuries sustained by the appellant as a result of an accident caused by a vehicle owned by the 1st respondent and insured with the 2nd respondent. The details of the compensation awarded by the Tribunal to the claimant are as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Permanent Disability @ 80%	80000
Pain and sufferings	25000
Nutrition	10000
Attender charges	5000
Damages to clothes	2000
Transportation	5000



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of amenities	10000
Medical expenses	3000
Total	140000

4. Admittedly one of the legs of the appellant / claimant has been amputated due to the accident caused by a vehicle insured with the 2nd respondent. The findings with regard to the negligence has attained finality as no appeal has been filed by the respondents. The only question that arises for consideration in this appeal is whether the compensation awarded by the Tribunal is a just compensation or not and whether the appellant / claimant is entitled for enhancement of compensation. The appellant / claimant was a Labourer at the time of the accident which happened in the year 2011. The appellant was admittedly aged more than 60 years at the time of the accident. No documentary evidence has been produced by the appellant / claimant before the Tribunal to prove her age. The 2nd respondent has also contended that the appellant / claimant is a very old lady and therefore the question of granting compensation towards loss of earning capacity does not arise. The Tribunal after giving due consideration to the nature of the avocation



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of the appellant / claimant, who admittedly is an agricultural labourer and after giving due consideration to the age of the appellant / claimant has rightly not adopted the multiplier method as the appellant / claimant would not have suffered any loss of earning capacity on account of the injuries and further there is also no documentary evidence placed on record by the appellant / claimant to prove the same. However, since the appellant / claimant had to amputate her one leg on account of the injuries sustained by her due to the accident caused by a vehicle insured with the 2nd respondent, necessarily, the quantum of compensation to be awarded to the appellant / claimant must be adequate and should be a just compensation. The Tribunal under the impugned award has given a correct finding that the appellant / claimant is not entitled for loss of earning capacity by the adoption of the multiplier method and has also rightly awarded compensation on percentage basis. This Court is of the considered view that the compensation awarded by the Tribunal under various other heads and the calculation of disability compensation at Rs.1,000/- per percentage of disability is not correct. The accident happened in the year 2011. For an accident, which admittedly happened in the year 2011, the disability compensation to be awarded on percentage basis has to be calculated at Rs.2,500/- per percentage of



disability. The Tribunal under the impugned award has rightly assessed the disability of the appellant / claimant at 80% after giving due consideration to the nature of the avocation, the age of the appellant / claimant and the disability certificate. However, the Tribunal ought to have calculated the disability compensation of the appellant / claimant at Rs.2,500/- per percentage of disability instead of erroneously calculating the disability compensation at Rs.1,000/- per percentage of disability, after giving due consideration to the year of the accident, which admittedly happened in the year 2011. This Court therefore enhances the disability compensation from Rs.80,000/- to Rs.2,00,000/- by assessing the disability compensation at Rs.2,500/- per percentage of disability for the 80% disability suffered by the appellant / claimant.

5. The Tribunal has also awarded a lesser compensation towards pain and suffering, attender charges and loss of amenities. The Tribunal ought to have given due consideration to the fact that the appellant / claimant had to get one of her legs amputated due to the injuries sustained by her as a result of the accident caused by a vehicle insured with the 2nd respondent. Therefore, this Court enhances the compensation awarded to the appellant towards pain and suffering from Rs.25,000/- to Rs.50,000/-; towards attender charges from Rs.5,000/- to



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Rs.25,000/- and towards loss of amenities from Rs.10,000/- to Rs.25,000/- respectively. The quantum of compensation towards the aforesaid heads are determined by this Court after giving due consideration to the nature of the avocation of the appellant / claimant as well as her age which is more than 60 years, even according to the appellant / claimant. Insofar as the compensation awarded by the Tribunal under various other heads are concerned, they do not require any interference from this Court.

6. For the foregoing reasons, the compensation awarded by the Tribunal is re-worked in the following manner :-

<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Permanent Disability @ 80% *Rs.2,500/- x 80%	80,000	2,00,000 *
Pain and suffering	25,000	50,000
Nutrition	10,000	10,000
Attender charges	5,000	25,000
Damages to clothes	2,000	2,000
Transportation	5,000	5,000
Loss of amenities	10,000	25,000
Medical expenses	3,000	3,000
Total	1,40,000	3,20,000

7. In the result, this appeal stands partly allowed by enhancing the



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compensation from Rs.1,40,000/- to Rs.3,20,000/-. No Costs.

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8. The 2nd respondent / Insurance Company is directed to deposit the amount awarded by this Court, after deducting the amount already deposited if any, together with interest and costs to the credit of M.C.O.P.No. 156 of 2011 on the file of the Motor Accident Claims Tribunal and the Chief Judicial Magistrate, Thiruvannamalai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the award amount to the bank account of the appellant / claimant through RTGS within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

9. In view of the fact that this appeal has been filed only in the year 2019 and was numbered in the year 2022, despite the fact that the award was passed by the Tribunal as early as in the year 2013, the appellant / claimant is not entitled for any interest for the period from 05.07.2013 to till the date of the filing of the appeal i.e., 10.12.2019.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

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ABDUL QUDDHOSE, J.

vsi2

To

1. The Chief Judicial Magistrate
Motor Accident Claims Tribunal,
Thiruvannamalai.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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