IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.643 of 2024
and
C.M.P.No.12099 of 2024

R.Lakshmi
W/o.K.Ramakrishnan ... Appellant

Vs.

1.P.Mumtaj
W/o.Peer Mohammed

2.The Manager,
United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai - 6. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.02.2023 passed in M.C.O.P.No.2579 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court I, Small Causes Court, Chennai.

For Appellant : Mr.R.Ramesh

For Respondents : Mr.K.Swaminathan [R2]

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JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court I, Small Causes Court, Chennai, has filed this appeal against the award passed in M.C.O.P.No.2579 of 2018, dated 07.02.2023.

2. The case of the claimant is that on 11.02.2018 she was travelling as a pillion rider in a two wheeler at NRT Road and at about 09.30 a.m. when the two wheeler was near the New Bridge in Royapuram, the offending vehicle belonging to the first respondent was driven in a rash and negligent manner and it hit the two wheeler, in which the claimant was travelling as a pillion rider, from behind and as a result, the claimant fell down and suffered L1 vertebra fracture. She took treatment as an inpatient from 23.02.2018 to 28.02.2018 and also underwent a surgery. The Medical Board assessed the permanent disability at 10%. It is under these circumstances, the claim petition came to be filed seeking compensation.

3. The Tribunal, on considering the facts and circumstances of the

case and on appreciation of oral and documentary 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 determine the compensation and awarded total compensation of Rs.3,87,800/- under various heads as follows:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Medical expenses	2,59,947/-
2.	Disability	50,000/-
3.	Pain and sufferings	30,000/-
4.	Loss of earnings	22,000/-
5.	Extra nourishment	10,000/-
6.	Loss of amenities	10,000/-
7.	Transportation	4,000/-
8.	Attender charges	1,800/-
	Total	**3,87,747/-**
	Rounded off to	**3,87,800/-**

The above compensation was directed to be paid with interest at 7.5% p.a.

4. The claimant, not being satisfied with the compensation awarded

by the Tribunal, has approached this Court seeking for enhancement of compensation.

5. When the matter came up for hearing on 23.04.2024, this Court passed the following order:

> "The main ground that was urged by the learned counsel for the appellant is that the Tribunal has fixed only a sum of Rs.5,000/- per percentage of disability for the accident that took place in the year 2018 and hence, enhancement is sought for on that ground.
>
> 2.The other ground that was urged was regarding the income of the appellant. The Tribunal has fixed a sum of Rs.11,000/- as the monthly notional income of the appellant. However, it was argued that the appellant is an income tax assessee and was running an Optometry Clinic and was earning a sum of Rs.60,000/- per month. The Tribunal on considering Exs.P17 to P19, came to a conclusion that the balance sheet that was relied upon by the appellant was a self styled document and even Form-16 was not filed by the appellant.
>
> 3.The learned counsel for the appellant seeks for some time to move an application for filing additional documents in this case.
>
> 4.Post this case for hearing on 04.06.2024."

6. Pursuant to the above order, a petition in C.M.P.No.12099 of 2024 in C.M.A.No.643 of 2024 has been filed to permit the appellant to bring in two additional documents and this petition is considered along with the main appeal.

7. Heard Mr.R.Ramesh, learned counsel for appellant/claimant and Mr.K.Swaminathan, learned counsel for second respondent insurance company.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The Tribunal had awarded Rs.5,000/- per percentage while calculating the disability for the accident that took place in the year 2018. Considering the judgment of the Division Bench of this Court in C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others], this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'disability' is fixed at Rs.70,000/- (7000 * 10).

11. Insofar as loss of earnings is concerned, the Tribunal has fixed the notional monthly income at Rs.11,000/-. The finding of the Tribunal

in this regard is extracted hereunder:

> "The petitioner stated in her petition that she was doing Self Employment and running Optometry Clinic and Opticals and she was earned Rs.60,000/- per month income at the time of accident. The petitioner has filed the copy of Diploma in Ophthalmic Techniques certificate is marked as Ex.P17, the copy of optical shop licence is marked as Ex.P18 and the copy of income tax receipt and balance sheet is marked as Ex.P19. The Ex.P19 is the balance sheet and it is not a FORM 16 submitted by the petitioner to the income tax department. The Balance Sheet is the self styled document and it cannot be taken into consideration. Hence, the income as stated by the petitioner is not admissible one. Hence in these circumstances, the notional income has to be fixed. Accordingly, considering the age and other relevant factor of the petitioner Rs.11,000/- is fixed as monthly notional income of the petitioner."

12. The Tribunal did not accept the claim made by the appellant on the ground that the income tax returns were not filed before the Tribunal. In view of the same, a petition has been filed during the pendency of the appeal in C.M.P.No.12099 of 2024 in C.M.A.No.643 of 2024 under Order 41 Rule 27 of the Code of Civil Procedure, to permit the appellant to file income -tax returns filed before the Income-Tax Department for the assessment years 2014-15 and 2016-17.

13. There can be no dispute with regard to the documents that are relied upon by the appellant since these are the income-tax returns, which

have been duly certified by the Department. Insofar as the assessment year 2014-15 is concerned, the income-tax return was filed on 27.11.2014 and it shows the gross total income of the appellant as Rs.3,20,506/-. Similarly, the income-tax return for the assessment year 2016-17 was filed on 21.03.2018 wherein the gross income was shown as Rs.3,28,538/-.

14. Considering the above documents, this Court is inclined to allow the petition in C.M.P.No.12099 of 2024 in C.M.A.No.643 of 2024 and accordingly, the same is allowed. The income-tax returns for the assessment years 2014-15 and 2016-17 are marked as Ex.P23 and Ex.P24.

15. Considering the above documents, it can be seen that the appellant would have earned not less than Rs.25,000/- during the relevant period as monthly income from the business. The nature of injury sustained by the appellant was L1 Vertebra Fracture. Considering this injury, the appellant could not have undertaken any work for at least six months. Therefore, the loss of income can be fixed at Rs.1,50,000/-

[25,000 * 6].

16. The compensation awarded under the other heads is reasonable and it does not require the interference of this Court.

17. In the light of the above discussion, this Court modifies the compensation in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount awarded by the Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Medical expenses	2,59,947/-	2,59,947/-
2.	Disability	50,000/-	70,000/-
3.	Pain and sufferings	30,000/-	30,000/-
4.	Loss of earnings	22,000/-	1,50,000/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Loss of amenities	10,000/-	10,000/-
7.	Transportation	4,000/-	4,000/-
8.	Attender charges	1,800/-	1,800/-
	Total	**3,87,747/-**	**5,35,747/-**
	Rounded off to	**3,87,800/-**	**5,35,800/-**

18. The compensation awarded by the Tribunal at Rs.3,87,800/- is enhanced to Rs.5,35,800/-. The second 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 six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,48,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 173 days as was ordered by this Court in C.M.P.No.489 of 2024 in C.M.A.Sr.No.158463 of 2023 dated 29.02.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

24.06.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH, J.

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To

The Motor Accident Claims Tribunal,
Special Sub Court I,
Small Causes Court, Chennai.

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