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CMA.No.1620 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1620 of 2024

B.Sasikala

... Appellant

vs.

1.M/s.Siddhi Vinayak Logistics Limited,
H.No.429 at Post Mugaon, Tal Shahapur,
Dt Thane, Shahapur.

2.United India Insurance Company Limited,
Silingi Building, 4th Floor,
Motor Third Party Claims Hub,
No.132, Greams Road, Chennai - 600 006.

3.K.Malar

4.Cholamandalam MS General Insurance Company Limited,
Harinivas Complex, 2nd Floor,
No.163, Thambu Chetty Street,
Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 03.06.2023 in M.C.O.P.5446 of 2017 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.I), Small Causes Court, Chennai.



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For Appellant : Mr.K.Varadha Kamaraj
For R2 : Ms.R.Rathna Thara
For R4 : Ms.R.Sreevidhya

J U D G M E N T

The appellant is the claimant in M.C.O.P.5446 of 2017 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.I), Small Causes Court, Chennai. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.80,00,000/- for the injuries sustained by her in a road accident that took place on 15.07.2017.

2. The brief case of the claimant is as follows :

On 15.07.2017, the claimant was standing near Vandalur over bridge and at about 14.50 hours, a speeding container lorry bearing Registration Number MH-04-FU-9968 belonging to the first respondent, hit a car bearing Registration TN-22-DD-6577 belonging to the third respondent, which in turn hit the claimant. The claimant therefore, sustained multiple injuries all over her body. She was immediately rushed to Rajiv Gandhi Government General Hospital, Chennai, where she was



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treated as an inpatient from 15.02.2017 to 02.05.2017.

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3. According to the claimant, the rash and negligent driving of the driver of the container lorry bearing Registration Number MH-04-FU-9968 and the driver of the car bearing Registration TN-22-DD-6577 were the cause of the accident and that since the said vehicles were insured with the United India Insurance Company Limited and the Cholamandalam MS General Insurance Company Limited respectively, the owners and the insurers are jointly and severally liable to pay compensation to her.

4. In the Tribunal the owners of the container lorry and the car remained absent and were set *ex parte*. The Insurance Companies resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the container lorry bearing Registration Number MH-04-FU-9968 and the driver of the car bearing Registration TN-22-DD-6577 in the ratio 75:25 and awarded



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compensation of Rs.20,93,800/- to the appellant (claimant) together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 03.06.2023.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.K.Varadha Kamaraj, learned counsel for the appellant, Ms.R.Rathna Thara, learned counsel for the second respondent and Ms.R.Sreevidhya, learned counsel for the fourth respondent.

8. Mr.K.Varadha Kamaraj, learned counsel for the appellant contended that the claimant was a tailor by profession earning a sum of Rs.15,000/- per month. However, the Tribunal fixed the notional monthly income of the claimant only as Rs.10,500/-. He further contended that the left leg of the claimant was amputated above the knee level and the Medical Board attached to Rajiv Gandhi Government General Hospital, Chennai has assessed the disability of the claimant as 82% and the



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Tribunal without assigning any reason, had reduced the same to 70%. He therefore prayed for enhancement of compensation.

9. Per contra, Ms.R.Rathna Thara, learned counsel for the second respondent and Ms.R.Sreevidhya, learned counsel for the fourth respondent contended that the claimant has not adduced any evidence to show that she was a tailor by profession and that the Tribunal had awarded just compensation and therefore, the same need not be disturbed.

10. A perusal of the discharge summary (Ex.P3) shows that the claimant was admitted in the hospital as an inpatient on 15.02.2017 and discharged on 02.05.2017 and her left leg was amputated above knee level. The Medical Board attached to Rajiv Gandhi Government General Hospital, Chennai had also assessed the partial permanent disability of the claimant as 82% and the Tribunal had reduced the same to 70%, without assigning any reason.

11. The contention of the counsel for the Insurance Company



that no satisfactory evidence was adduced for her profession / income and therefore, the act of the trial court in reducing the percentage of disability from 82% to 70% is reasonable defies logic. However, it has to be noted that the claimant was just 34 years old and her left leg was amputated above knee level which make the above contention meaningless. Even as a homemaker her inability to function in a normal manner has to be taken into consideration immaterial of the fact whether satisfactory evidence regarding her income or profession given. Therefore the percentage of disability assessed by the Medical Board is accepted in *toto*. Moreover, it seen from the certificate issued by Celebrity Fashions Limited, Chennai, shows that the claimant was working as a tailor during 2015 - 2016. In the circumstances, multiplier method is adopted, as per the decision of *a Division Bench of the Honourable Supreme Court in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343*.

12. In the absence of income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.10,500/-. The claimant was aged 34 on the date of accident and the accident took place in the year 2017. Considering the same, notional monthly income of the claimant is



fixed as Rs.15,000/-. As per the decision of the Supreme Court of India in

National Insurance Co. vs Pranay sethi and others reported in **2017 (2)**

TNMAC 601, 40% is added towards future prospects of the claimant. The claimant was aged 34 years on the date of accident and the proper multiplier to be adopted in the instant case is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121**.

Calculation for loss of earning capacity

Notional income	- Rs.15,000/-
40% Future prospects	- Rs.21,000/-
Loss of earning capacity	- 21,000 x 12 x 16 x 82/100
	= Rs.33,06,240/-

The amount awarded by the Tribunal towards pain and sufferings is meagre and the same is enhanced to Rs.1,00,000/-. The following tabular column would show the amount awarded by the Tribunal and the enhancement of the same by this Court.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Loss of earning capacity	19,75,680/-	33,06,240/-



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
2.	Pain and sufferings	50,000/-	1,00,000/-
3.	Transportation	5,000/-	5,000/-
4.	Extra nourishment	10,000/-	10,000/-
5.	Attender's charges	23,100/-	23,100/-
6.	Loss of amenities	30,000/-	30,000/-
	Total	Rs.20,93,780/- is rounded off to Rs.20,93,800/-	Rs.34,74,340/-/-

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.20,93,800/- to Rs.34,74,340/- which would carry interest at the rate of 7.5% per annum.

14. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.20,93,800/- to Rs.34,74,340/-.
- iii. The appellant / claimant is directed to pay the court fee for the



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enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.

iv. The second Respondent, the United India Insurance Company Limited is directed to deposit 75% of the enhanced compensation amount, i.e., Rs.26,05,755/- and the fourth Respondent, the Cholamandalam MS General Insurance Company Limited is directed to deposit 25% of the enhanced compensation amount, i.e., Rs.8,68,585/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.5446 of 2017 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.I), Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order.

v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.



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vi. The appellant / claimant is not entitled to claim interest for the period of delay of 26 days in filing this appeal.

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Index : Yes/No
Speaking/Non-speaking order
mtl



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To

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1. The Motor Accident Claims Tribunal,
Special Sub Court No.I, Small Causes Court, Chennai,
2. United India Insurance Company Limited,
Silingi Building, 4th Floor,
Motor Third Party Claims Hub,
No.132, Greaves Road, Chennai - 600 006.
3. Cholamandalam MS General Insurance Company Limited,
Harinivas Complex, 2nd Floor,
No.163, Thambu Chetty Street,
Chennai - 600 001.
4. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.
mtl

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