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C.M.A. No.4112 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.4112 of 2019

1. Muniammal
2. Yasoda
3. Nagammal
4. Rani
5. Jaya
6. Murugan

.... Appellants

VS.

1. K. Palani
2. United India Insurance Company Ltd.,
Rep. by its Branch Manager,
Branch Office,
No.95, Big Street,
First Floor,
Tiruvannamalai – 606 601.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to modify the order and decretal order dated 21.03.2018 passed in M.C.O.P. No.589 of 2010 on the file of the Motor Accident Claims Tribunal / Additional District Court, Krishnagiri and to enhance the compensation amount to Rs.15 lakhs as against the sum of Rs.3,84,000/- awarded thereon.



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For Appellants
For Respondents

: Mr.Sankaralingam
: Mr.A. Dhiraviyanathan for R2
R1 - Dismissed

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JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award passed by the Tribunal.

2. The 2nd respondent Insurance Company has been directed to pay the appellants / claimants a compensation of Rs.3,83,936.47 for the injuries sustained by Manikammal caused by a vehicle insured with the 2nd respondent as detailed hereunder :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of income	20,000.00
For transportation	5,000.00
For extra nourishment	5,000.00
For Attenders	10,000.00
For medical expenses	3,03,936.47
Loss of amenities	15,000.00
Pain and suffering	25,000.00
Total	3,83,936.47

3. Ms.Manikammal sustained the following injuries as a result of an accident caused by a vehicle insured with the 2nd respondent which has not been disputed by the respondents as seen from the evidence available on record :-



1. *Left thigh swollen and deformed and restricted left hip joint movements.*
2. *2 x 0.5 x 0.6 cm. Laceration on right frontal region*
3. *2 x 1.5 cm. Contusion on back of right wrist and also sustained multiple injuries all over the body.*

X-ray left thigh shows : Fracture middle 1/3rd of left femur.

X-ray right wrist shows : Colles fracture of right radius with fracture ulna.

It is also not in dispute that the accident victim Manikammal had sustained grievous injuries as a result of the accident caused by the vehicle insured with the 2nd respondent / Insurance Company. The nature of injuries sustained by Manikammal as reflected in the impugned order of the Tribunal as well as the period of her hospitalisation is not disputed by the 2nd respondent / Insurance Company. Manikammal had died during the pendency of the claim petition and the appellants who are her Legal Representatives to her estates were brought on record. The disability of the accident victim (Manikammal) was not assessed by the Medical Board as she died during the pendency of her claim petition. Admittedly, the accident victim (Manikammal) had incurred a sum of Rs.3,03,936.47 towards medical expenses in respect of her treatment taken due to the injuries sustained by her as a result of the accident caused by the vehicle insured with the 2nd respondent. Ms.Manikammal was a vegetable vendor. The avocation of the accident victim Manikammal has also not been disputed by the 2nd respondent / Insurance



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Company. Since documentary evidence was not produced by the appellants / claimants before the Tribunal to prove the monthly income of Manikammal, the Tribunal has fixed the monthly income of Manikammal on notional basis at Rs.5,000/-p.m. for an accident that happened in the year 2009. This Court is of the considered view that the assessment of the notional monthly income of Manikammal is erroneous as for the accident of the year 2009, it is settled practice to fix the notional monthly income of a vegetable vendor at Rs.6,500/-p.m. The Tribunal ought to have given due consideration to the grievous injuries sustained by Manikammal as a result of the accident caused by a vehicle insured with the 2nd respondent / Insurance Company, while assessing the loss of income. When Manikammal had sustained grievous injuries and was hospitalised for a long period of time and that too she had admittedly incurred a sum of Rs.3,03,936.47 towards medical expenses, the Tribunal ought to have assessed the compensation towards loss of income for a period of 18 months but the Tribunal has erroneously awarded a lumpsum compensation of Rs.20,000/- only towards loss of income, which in the considered view of this Court is low. Accordingly, this Court enhances the compensation payable to the appellants / claimants towards loss of income from 20,000/- to Rs.1,17,000/-, calculated at Rs.6,500/-p.m., for a



period of 18 months.

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4. However, the contention of the appellants in this appeal seeking for assessment of compensation towards loss of earning capacity by adopting the multiplier method is rejected in view of the fact that there is no evidence placed on record by the appellants / claimants before the Tribunal. Also, the appellants / claimants have not examined any Doctor's, who have treated the accident victim (Manikammal) and the disability of the accident victim Manikammal has not been assessed.

5. Insofar as the compensation awarded by the Tribunal towards transportation, extra nourishment and attender charges are concerned, the Tribunal has fixed the compensation towards the same at Rs.5,000/-, Rs.5,000/- and Rs.10,000 respectively which in the considered view of this Court is low. After giving due consideration to the year of the accident, nature of the injuries sustained by the accident victim and the period of her hospitalisation, this Court deems it fit to enhance the compensation towards transportation, extra nourishment and attender charges to Rs.10,000/-, Rs.10,000/- and Rs.25,000/- respectively.

6. Insofar as the compensation awarded by the Tribunal towards loss of amenities at Rs.15,000/- is concerned, the same is a just compensation and does not call for any interference from this Court.



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7. However, the compensation awarded by the Tribunal towards pain and suffering at Rs.25,000/- is low. The Tribunal ought to have given due consideration to the year of the accident, the nature of injuries sustained by Manikammal and the period of her hospitalisation before assessing the compensation towards pain and suffering. The Tribunal has not given due consideration to the same. Accordingly, if the same is given due consideration, the compensation awarded has to be enhanced to Rs.75,000/- towards pain and sufferings instead of Rs.25,000/- erroneously fixed by the Tribunal.

8. Admittedly, there was a policy violation committed by the insured as seen from undisputed evidence available on record. The Tribunal has rightly granted pay and recovery rights under the impugned award and therefore, the same is confirmed by this Court. No costs.

9. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.3,84,000/- to Rs.5,56,000/- as detailed hereunder:

<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Loss of income Rs.6,500/- x 18	20,000.00	1,17,000.00 *



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<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Transportation	5,000.00	10,000.00
Extra nourishment	5,000.00	10,000.00
Attender charges	10,000.00	25,000.00
Medical expenses	3,03,936.47	3,03,936.47
Loss of amenities	15,000.00	15,000.00
Pain and suffering	25,000.00	75,000.00
Total	3,83,936.47	5,55,936.47
Rounded off	3,84,000.00	5,56,000.00

10. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.3,84,000/- to Rs.5,56,000/-. No Costs.

11. 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 @ 7.5%p.a., from the date of claim till the date of deposit and cost, to the credit of M.C.O.P. No.589 of 2010 on the file of the Motor Accident Claims Tribunal, the Additional District Court (FAC), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants /claimants as per the same ratio of



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apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellants / claimants before receiving the copy of this Judgment.

18.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Additional District Judge (FAC),
Motor Accidents Claims Tribunal,
Krishnagiri.

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

ABDUL QUDDHOSE, J.

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