



C.M.A(MD)No.86 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.01.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.86 of 2022

Mariyammal

... Appellant

Vs.

1.Saravanan

2.The United Indian Insurance Company

Limited,

represented through the Divisional Manager,

having its Office at KAR Buildings,

R.S.Road, Dindigul-624 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, as against the fair order and ex-order passed in M.C.O.P.No. 218 of 2018 (C.N.R.No.TNDG050008132018) on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, (to deal with MCOP cases), Dindigul, dated 16.09.2021.

For Appellant : Mr.R.Thangapandian

For R1 : Mr.C.M.Arumugam

For R2 : Mr.A.Ilango



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JUDGMENT

The present Civil Miscellaneous Appeal is filed by the claimant.

2.It is a case of injury. At the time of accident, the claimant has lost her tooth and also sustained abrasions in her forehead, nose, lower eye lid, laceration over the left cheek, fracture in her upper incision teeth and also sustained cut injury on her left side forehead and heavy blow on the shoulder. The permanent disability was assessed as 5% and Rs.78,830/- was granted as compensation. The liability is fixed on the owner of the vehicle and not on the Insurance Company since the Driver was having only LMV license and was not having any badge.

3. It is a settled proposition if Driver is having LMV license, he is entitled to drive heavy vehicles until 7500 kg. Therefore, the Tribunal has erred in holding that since the Driver is not having valid driving license with badge and consequently the Insurance Company is not liable. Therefore, this Court is inclined to interfere in the impugned order.



4. As far as the enhancement of income is concerned, the Tribunal has granted the loss of income by taking the monthly income as Rs.6,500/-. It is seen that the injured was working as Coolie and the accident happened on 29.12.2017. The minimum notional income for any accident prior to 2008 is Rs.6,500/-. In the present case since the accident happened in the year 2017, the minimum notional income ought to be fixed as Rs.8,000/-. Therefore, the salary fixed by the Tribunal is increased to Rs.8,000/- by this Court.

5. As far as the partial permanent disability is concerned, for loss of teeth, 5% was granted by the Tribunal. Since it is permanent loss, this Court is increasing the disability to 10%. For pain and sufferings, the Tribunal has awarded only Rs.10,000/- but this Court is increasing it as Rs.20,000/-. For loss of amenities, the Tribunal has awarded only Rs.10,000/- but this Court is increasing it to Rs.20,000/-. For attender charges, the Tribunal has awarded only Rs.2,000/- but this Court is increasing it to Rs.5,000/-.

6.The modified award amount granted by this Court is tabulated under:



Sl. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.13,000/- (Rs.6,500 *2)	Rs.16,000/- (Rs.8,000*2)	Enhanced
2.	For Partial Permanent Disability	Rs.25,000/- (5% @ 1% Rs.5,000/-)	Rs.1,00,000/- (10% @ 1% Rs.10,000/-)	Enhanced
3.	Medical Expenses	Rs.12,828/-	Rs.12,828/-	Confirmed
4.	Transport Charges	Rs.2,000/-	Rs.2,000/-	Confirmed
5.	Extra Nourishment	Rs.2,000/-	Rs.2,000/-	Confirmed
6.	Damages to clothing and Articles	Rs.2,000/-	Rs.2,000/-	Confirmed
7.	Pain and Sufferings	Rs.10,000/-	Rs.20,000/-	Enhanced
8.	Loss of Amenities	Rs.10,000/-	Rs.20,000/-	Enhanced
9.	Attender Charges	Rs.2,000/-	Rs.5,000/-	Enhanced
	Gross Total	Rs.78,828 rounded to Rs.78,830/-	Rs.1,79,828/- rounded to Rs.1,79,830/-	Enhanced

Therefore, this Court is enhancing the award amount granted by the Tribunal from Rs.78,830/- to Rs.1,79,830/- as stated supra.

7.The 2nd respondent Insurance Company is directed to deposit Rs. 1,79,830/- (Rupees One Lakh Seventy Nine Thousand Eight Hundred and Thirty only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued



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interests and costs, less the amount already withdrawn by her, if any, by filing appropriate application before the Tribunal.

8. Hence, the Civil Miscellaneous Appeal is allowed on the above terms.

No costs.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Tmg

To

1. Motor Accident Claims Tribunal,
Special Subordinate Judge,
Dindigul.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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