



C.M.A.(MD) No.841 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.841 of 2024

Premalatha

W/o.Ravichandran

... Appellant

Vs.

1.Anandan

S/o.Govindaraj

2.The Branch Manager,

TATA AIG General Insurance Company Limited,

1st Floor, Raj Tower, 6, 7,

Karur Bypass Road,

Near Kalaingar Arivalaiyam,

Trichy - 620002.

... Respondents

[R1 was set *exparte* before the Tribunal]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment passed in M.C.O.P.No.123 of 2020 dated 29.03.2022 on the file of MACT (Special Subordinate Court), Thanjavur.

For Appellant : Mr.A.Sivasubramanian

For R2 : Mr.V.Sakthivel



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J U D G M E N T

WEB COPY The instant appeal has been filed by the claimant, seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special Subordinate Court), Thanjavur, *vide* its Judgment and Decree dated 29.03.2022 in M.C.O.P.No.123 of 2020.

2. The appellant/claimant filed a claim petition in M.C.O.P.No.123 of 2020 before the Tribunal stating that on 12.12.2019, at about 02.00 p.m., while she was riding her two-wheeler bearing Registration No.TN-49-BT-7151, a Tata Ace vehicle owned by the first respondent and insured with the second respondent Insurance Company came in a rash and negligent manner and collided with the two-wheeler, as a result of which she sustained fractures in her left hand and left leg, and her leg below the knee was amputated.

3. The owner of the insured vehicle had remained *exparte* before the Tribunal. The second respondent, Insurance Company, filed a counter affidavit before the Tribunal stating that the accident took place only due to the negligence of the appellant/injured claimant; and that, in any case, the compensation claimed by the appellant/claimant was excessive.



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4. Before the Tribunal, the appellant/claimant has examined herself as P.W.1 and marked Exs.P1 to P12. The second respondent, Insurance Company, has neither examined any witnesses nor marked any documents.

5. The Tribunal, after considering the oral and documentary evidence, held that the accident took place only due to the negligence of the driver of the insured vehicle. However, the Tribunal held that, since the appellant/injured claimant did not have a valid driving license, 10% contributory negligence should be apportioned to her. The Tribunal fixed the total compensation at Rs.14,22,862/-, from which Rs.1,42,286/- was deducted towards 10% contributory negligence. The Tribunal directed the second respondent, the Insurance Company, to deposit Rs.12,80,576/- along with interest at 7.5% per annum from the date of the claim petition until the date of deposit and costs.

6. The learned counsel for the appellant/injured claimant submitted that her only grievance is that the quantum of compensation awarded by the Tribunal is meagre and requires enhancement under the heads of 'loss



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of income due to the disability', 'attendant charges, and "future medical expenses'.

7. The learned counsel for the second respondent, Insurance Company, per contra, submitted that the Tribunal had awarded just and reasonable compensation, and no interference is called for.

8. The only question involved in the instant appeal is whether the Tribunal has awarded just and reasonable compensation.

9. The appellant/injured claimant was 39 years old at the time of the accident. She claimed that she was working as a tailor and earning a sum of Rs.25,000/- per month. Although she had examined herself as P.W.1, she did not produce any documentary evidence to prove either her avocation or income. Considering the said fact, the Tribunal adopted the notional income of Rs.7,000/- per month. Since the appellant/injured claimant had deposed that she was working as a tailor and there is no contrary evidence, and considering the year of the accident, the age of the appellant/injured claimant, and her avocation, this Court is of the view that it would be just and reasonable to fix the notional income of the



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appellant/injured claimant at Rs.12,000/- per month. Further, the appellant/injured claimant is entitled to a 40% enhancement towards 'future prospects'.

10. The Medical Board, Thanjavur Medical College and Hospital, assessed the disability of the appellant/injured claimant at 74%. Considering the avocation of the appellant/injured claimant and the injuries sustained by her, this Court is of the view that the functional disability assessed by the Tribunal at 50% is in accordance with the law. Hence, no interference is called for in that finding.

11. Thus, the compensation under the head 'loss of income due to the disability' has to be enhanced as follows:

Loss of income due to the disability:

Age of the injured claimant - 39 years.

Monthly notional income - Rs.12,000/-

Annual income (Rs.12,000 x 12) : Rs.1,44,000/-

Add: Future Prospects (40 %)
(Rs.1,44,000 x 40%) : Rs. 57,600/-

: Rs.2,01,600/-



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Multiplier 15 (applicable)

(Rs.2,01,600 x 15)

: Rs.30,24,000/-

Loss of income due to the disability

(Rs.30,24,000 x 50/100)

- **Rs.15,12,000/-**

12. The award under the heads 'pain and sufferings' and 'loss of amenities' is confirmed. The award under the head 'loss of income during treatment' is enhanced to Rs.12,000/- from Rs.8,000/-.

13. Since the appellant/injured claimant's leg has been amputated, she is entitled to attendant charges. The Tribunal has only awarded a meagre sum of Rs.7,000/-. The nature of the injury warrants enhancement under the said head. In the facts and circumstances, considering the injury, the period of treatment, and the need for continuous help, this Court is of the view that it would be just and reasonable to award Rs.1,50,000/- towards 'attendant charges'.

14. The compensation under the heads 'conveyance charges', 'special diet', and 'reimbursement of medical bills' is also confirmed.



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WEB COPY 15. It is seen from the records that the appellant/injured claimant would be entitled to an artificial leg, a motorized wheelchair, and the future medical expenses. Thus, this Court is of the view that it would be just and reasonable to award Rs.1,00,000/- for the cost of fixing an artificial leg, Rs.1,00,000/- for the purchase of a motorized wheelchair, and Rs.50,000/- for future medical expenses.

16. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of income due to the disability	Rs.8,82,000/-	Rs.15,12,000/-	enhanced
2	Pain and sufferings	Rs.1,00,000/-	Rs. 1,00,000/-	confirmed
3	Loss of amenities	Rs.1,00,000/-	Rs. 1,00,000/-	confirmed
4	Loss of income during treatment	Rs. 8,000/-	Rs. 12,000/-	enhanced
5	Attendant charges	Rs. 7,000/-	Rs. 1,50,000/-	enhanced
6	Conveyance charges	Rs. 10,000/-	Rs. 10,000/-	confirmed
7	Special diet	Rs. 5,000/-	Rs. 5,000/-	confirmed
8	Reimbursement of medical bills	Rs.3,10,862/-	Rs. 3,10,862/-	confirmed
9	For fixing an artificial leg	-	Rs. 1,00,000/-	granted



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10	For purchasing motorized wheelchair	-	Rs. 1,00,000/-	granted
11	Future medical expenses	-	Rs. 50,000/-	granted
Total		Rs.14,22,862/-	Rs.24,49,862/-	Enhanced by Rs.10,27,000/-

17. Since the Tribunal's finding regarding the contributory negligence, fixed at 10% on the appellant/claimant, is justified and there is no challenge to this finding, it is hereby confirmed. Thus, the compensation payable by the second respondent Insurance Company is Rs.22,04,876/- [Rs.24,49,862 x 90/100].

18. The second respondent Insurance Company shall deposit the enhanced compensation of Rs.22,04,876/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and the costs, after deducting the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this Judgment.

19. On such a deposit, the appellant/claimant is permitted to withdraw the compensation, interest, and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.



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WEB COPY 20. The appellant/injured claimant is directed to pay the necessary court fee for the enhanced amount of compensation, if any.

21. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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