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CMA.No.851 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.851 of 2025

Masilamani

... Appellant

Vs.

1. Rajesh
2. Balu Mahendran
3. The National Insurance Company Ltd.,
Rep. by its Branch Manager,
having office at No.40, Rastha Manavelli Street,
Mailadurai Town and District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation amount awarded in MCOP No.144 of 2018 dated 23.06.2023 on the file of the Sub Court, Motor Accident Claims Tribunal, Karaikal.

For appellant : Mr.K.Varadha Kamaraj

For Respondents : Ms.N.B.Surekha, for third respondent



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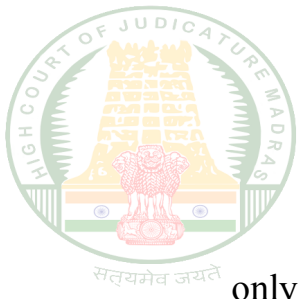
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JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this court by filing the present appeal.

2. It is not in dispute that the appellant/claimant suffered injury in a road accident that had occurred on 24.01.2018. According to the claimant, while he was crossing the Bharathiar Road from East to West at Thalatheru, opposite to Thillai's Shopping complex, the first respondent drove his two wheeler in a rash and negligent manner and hit against the claimant. As a result of accident, the claimant had fallen down and she suffered fracture in her right colles bone. Therefore, the claimant filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/-.

3. The first and second respondents, driver and owner of the two wheeler respectively remained exparte before the Tribunal and the claim petition was contested by the insurance company/third respondent by filing the counter stating that the accident had occurred



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only due to the negligent on the part of the victim.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the two wheeler belonging to the second respondent and insured with the third respondent/ insurance company. The compensation payable to the claimant was quantified at Rs.3,99,00/-. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this court.

5. Heard the learned counsel for the appellant and the third respondent/ insurance company.

6. The learned counsel for the appellant/claimant would submit that the claimant was employed in a super market which involves lifting of goods. He further submits that due to the malunion of collar bone, the claimant is not able to do her work as before and hence, the Tribunal should have applied multiplier method. The learned counsel also submits that the amount awarded by the Tribunal under the head



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loss of income is very much on lower side.

7. The learned counsel for the third respondent insurance company would submit that the injury suffered by the claimant not interfered with her avocation and hence, the Tribunal was justified in awarding compensation under percentage basis.

8. Based on the medical records produced by the claimant, the Tribunal noted that there was a malunion of fracture in colles bone in the right hand of the claimant. However, the claimant has not produced any evidence to prove that the injury suffered by her interfered with her avocation and she suffered functional disability. In the claim petition, it was stated that the claimant was employed in a super market, which involves lifting of goods. Taking into consideration the nature of injury and the date of accident, this court feels that the amount of Rs.5,000/- awarded by the Tribunal per percentage is very much on lower side and hence, the same is enhanced to Rs.7,000/-. In the absence of any concrete evidence that the injury suffered by the claimant interfered with her avocation,



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multiplier method cannot be adopted. As per the disability certificate Ex.C1 issued by the Medical Board, which examined the claimant, the disability suffered by the claimant was assessed at 41%. Therefore, the amount payable under the head future loss of earning capacity is enhanced to Rs.2,87,000/- (7,000 x 41).

9. As far as the compensation awarded by the Tribunal under the other heads, namely Pain and sufferings, loss of amenities, attender charges, transportation charges, nutrition expenses are concerned, they are just and reasonable and hence, the same are confirmed. However, the amount of Rs.1,000/- awarded under the head damages to cloths is set aside.

10. It is seen from the medical records that the fracture suffered by the claimant was treated by conservative method and the claimant had not undergone any surgery. In such circumstances, the Tribunal granted a sum of Rs.8,000/- per month towards loss of income, since it was claimed by the claimant that she was earning a sum of Rs.300/- per day and awarded a sum of Rs.48,000/- for six months under the loss of



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income. The above compensation is just and reasonable and hence, the same is also confirmed.

11. Accordingly, the compensation awarded by the Tribunal is revised as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Future loss of earning capacity	2,05,000	2,87,000	enhanced
2.	Pain and sufferings	40,000	40,000	confirmed
3.	Loss of amenities	40,000	40,000	confirmed
4.	Attender Charges	25,000	25,000	confirmed
5	Transport expenses	20,000	20,000	confirmed
6.	Nutritious food	20,000	20,000	confirmed
7.	Damages to cloths	1,000	--	set aside
8	Loss of income (8000 x 6)	48,000	48,000	confirmed
	Total	3,99,000	4,80,000	enhanced by 81,000

12. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the



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Tribunal at Rs.3,99,000/- is hereby enhanced to **Rs.4,80,000/-** together with interest at 7.5% per annum from the date of petition till the date of deposit.

13. The third **respondent** is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

24.03.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The Subordinate Court,
Motor Accident Claims Tribunal, Karaikkal.



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2. The Section Officer,
V.R. Section, Madras High Court.



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S.SOUNTCHAR, J.

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