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CMA.No.3528 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3528 of 2021

Malarkodi

... Appellant

Vs.

1. Diamond Engineering Chennai Pvt. Ltd.,
No.179, IT Highway,
Sholinganallur, Chennai 600 119.

2. ICICI Lombard General Insurance Company Ltd.,
Rep. by its Branch Manager,
Chottabai Centre, No.140,
Nungambakkam High Road,
Chennai 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 02.03.2020 passed in MCOP No.49 of 2014 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Chengalpattu.

For appellant : Dr.S.S.Swaminathan

For Respondent : Mr.P.Magesh, for second respondent

No appearance for first respondent



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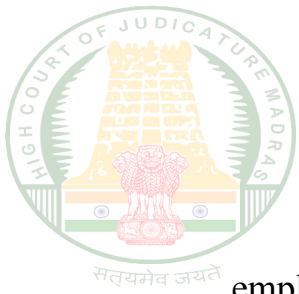
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JUDGMENT

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

2. It is not in dispute that the injured/claimant met with an accident on 01.10.2014, when she travelled as a pillion rider in the motor cycle bearing registration No.TN 19-8371, driven by its driver. It is the case of the appellant/claimant that the bus bearing registration No.TN 22 BX 4008 belonging to the first respondent, came from the back side of the motorcycle and caused the accident. As a result of the accident, the left leg of the appellant got amputated at knee level. Both the counsel have not advanced any argument on the question of negligence and liability and therefore, the facts necessary for fixing negligence and liability have not been considered in the present appeal.

3. The learned counsel for the appellant/claimant would submit that the accident occurred on 01.10.2014 and inspite of the fact that the appellant produced salary slip, salary certificate, etc. issued by her



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employer and the same were marked as Ex.P10, P14 and P11, the Tribunal failed to take into consideration those documentary evidence available on record and fixed a meager sum of Rs.6,500/- as income of the appellant. It is further submitted by the learned counsel for the appellant that in Ex.C1, disability certificate issued by the Medical Board, disability of the appellant was assessed at 60%. However, the Tribunal over looked the same and reduced the disability at 40%, without any basis.

4. The learned counsel for the second respondent/Insurance company would submit that though the appellant produced pay slip, salary slip etc. issued by her Employer, she failed to produce any document to show that the said salary was actually paid to the appellant. Therefore, the Tribunal is justified in not relying the said documents produced by the appellant/claimant. He further submitted that the appellant suffered amputation of left leg at knee level and the said disability was assessed by the Medical Board at 60% and the same was converted into functional disability at 40%. Therefore, the disability of 40% fixed by the Tribunal need not be interfered with.



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5. In order to prove the avocation and the income of the appellant, she was examined as PW1 and her employer was examined as PW2. The appellant clearly deposed that she was employed as a supervisor under PW2, who is extending house keeping service to an educational institution. It is also claimed by the appellant /claimant that she served as NALAM Community Wellness Mobilizer, as a part of 'Banyan' NGO Rural Mental Health Programme. The Ex.P10 is the pay slip of the appellant issued in the month of September 2014. A perusal of the Ex.P10 would suggest that her total salary was Rs.14,000/- per month. The Ex.P14 certificate was issued by her employer, mentioning her salary as Rs.14,000/- per month. The Ex.P11 is the certificate issued by the Deputy Director of 'The Banyan', certifying that the appellant served as a NALAM Community Wellness Mobilizer and she was paid an incentive of Rs.2,500/- per month along with other allowance of Rs.500/-.

6. The appellant has produced the above said Ex.P10, P11 and P14 to suggest that her monthly income was Rs.16,500/- at the relevant point of time. The employer was also examined as PW2 and he



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has given evidence, supporting the income of the appellant. Though the appellant has not produced any document to show that the amount mentioned in the salary certificate and other documents were actually paid to her, taking into consideration the date of accident and the documents filed by her in support of her income, this court feels that it would be appropriate to fix a sum of Rs.15,000/- per month as monthly income of the appellant/claimant.

7. The appellant suffered amputation of left leg at knee level. The evidence available on record would suggest that she was employed as a supervisor under PW2, who was engaged in private house keeping service to an educational institution. In fact, the appellant suffered road accident, when she was proceeding to her work place. PW2 clearly deposed that due to the amputation of left leg at knee level, the appellant/claimant is unable to continue her job and she was confined to the house. The said evidence of PW2 was not challenged by the respondents through cross examination. Therefore, this court comes to the conclusion that the amputation suffered by the appellant, definitely affected her avocation. Therefore, the opinion expressed by the



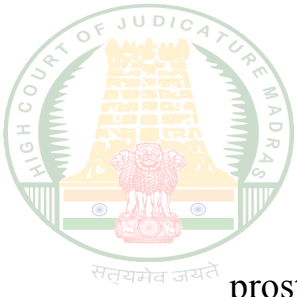
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Medical Board that the appellant suffered 60% disability is taken into consideration as it is and thereby this court fixes the disability suffered by the appellant as 60% .

8. As per the law laid down by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017)*, the appellant is entitled to 40% enhancement towards future prospects. Therefore, the monthly income of the appellant is fixed at Rs.21,000/- (15,000 +6000), which includes 40% future prospects. Accordingly, permanent disability suffered by the appellant is calculated by applying proper multiplier '16', which comes to Rs.24,19,200/-. (21,000x12x16x 60/100).

9. The appellant/claimant deposed before the Tribunal as PW1 that she has been using prosthetic limb. It is a matter of common knowledge that the prosthetic limb requires regular maintenance every year and it has to be replaced once in 15 years. The appellant was aged about 34 years at the time of accident. Therefore, she has to replace the



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prosthetic limb atleast twice during her life time, if the normal life expectancy of the appellant is taken into consideration at 70 years.

10. Further, taking into consideration the future medical expenses involved in replacing and maintenance of prosthetic limb, this court feels that it would be appropriate to award a sum of Rs.1,50,000/- towards future medical expenses, even though the appellant has not produced any documentary evidence for the same.

11. In view of the above discussion and also taking into consideration the year of accident, the amount awarded by the Tribunal at Rs.6,900 and Rs.4,000/- towards Conveyance and extra nourishment are enhanced to Rs.10,000/- and Rs.5,000/- respectively.

12. As far as the other compensation awarded by the Tribunal under the other heads viz., hospitalization and medicines, attender charges, damages for clothing and articles, pain and suffering, future amenities are concerned, the same are just and reasonable and hence they are confirmed.



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13. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	expenses to treatment, hospitalization and medicines	1,17,225	1,17,225	confirmed
2.	Conveyance	6,900	10,000	enhanced
3.	Extra nourishment	4,000	5,000	enhanced
4.	Attender charges	5,000	5,000	confirmed
5.	Damages for clothing and articles	1,000	1,000	confirmed
6.	Disability	6,98,880	24,19,200	enhanced
7.	pain and sufferings	25,000	25,000	enhanced
8	Loss of future amenities	25,000	25,000	confirmed
9.	Future medical expenses	-	1,50,000	granted
	Total	8,83,005	27,57,425	enhanced by 18,74,420

it is made clear that the compensation awarded towards Future medical expenses will not carry any interest.



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14. With the above modifications, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,83,005/- is hereby enhanced to Rs.27,57,425/-. The claimants are entitled to the said amount together with interest at 7.5% per annum **(except future medical expenses** and excluding the default period, if any) from the date of petition till the date of deposit. The appellants/claimants are directed to pay applicable additional court fee on the above mentioned enhanced amount.

15. The second 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 four 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. No costs.

10.02.2025

Index:Yes/No
Internet:Yes/No
mst



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To

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Motor Accident Claims Tribunal,
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S.SOUNTHAR, J.

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