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CMA.No.454 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.454 of 2025

E.Thirumalazhagan

... Appellant

Vs.

1. Susithra

2. The Divisional Manager,
United India Insurance Company Ltd.,
No.13-A, Nethaji Road, SBI Complex,
Manjakuppam, Cuddalore 707 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 as against the order in MCOP No.633 of 2020 dated 21.02.2023 on the file of the Principal Sub Court, Motor Accident Claims Tribunal, Cuddalore.

For appellant : Ms.Ramya V. Rao

For Respondents : Ms. R.Rathna Thara for second respondent



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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. The first respondent remained absent before the Tribunal and hence, notice to him is dispensed with.

3. Both the counsel for the appellant and the second respondent have not advanced any arguments 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.

4. It is not in dispute that the appellant/ claimant suffered fracture on her left Tibia in a road accident that had taken place on 07.05.2020. Therefore, the claimant filed a claim petition seeking compensation of Rs.15,00,000/- and the Tribunal awarded a sum of Rs.3,93,691/-. Aggrieved by the quantum of compensation, the claimant has filed the present appeal.



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5. The learned counsel for the appellant would submit that the accident had occurred in the year 2020 and the Medical Board assessed the disability suffered by the claimant as 30%. However, the Tribunal granted only a sum of Rs.5,000/- per percentage of disability and the same need to be enhanced at Rs.9000/- per percentage. In this regard, the learned counsel relied on a decision of this court in CMA No.3505 of 2024 dated 03.01.2025, in which, for the accident occurred in the year 2020, this court has fixed a sum of Rs.9,000/- per percentage. The learned counsel further submits that the Tribunal fixed notional income of the claimant at Rs.12,000/- per month, which is on lower side and having regard to the nature of injuries suffered by the claimant, the compensation awarded under the head loss of amenities also requires enhancement.

6. The learned counsel for the second respondent/insurance company would submit that the claimant has not produced any document to prove her monthly income and hence, the Tribunal was justified in fixing the monthly income at Rs.12,000/-. She also submits that having regard to the nature of injuries suffered by the claimant, the



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compensation awarded by the Tribunal under the heads disability and loss of amenities are sustainable.

7. A perusal of Ex.C1 disability certificate would indicate that the Medical Board assessed the disability suffered by the claimant at 30%. In the Disability Certificate, the Medical Board has given assessment at 3% for 'pain and sufferings'. The Tribunal awarded a sum of Rs.50,000/- towards pain and sufferings. Therefore, 3% disability fixed for pain and sufferings has to be deducted from the total disability assessed by the Medical Board. Accordingly, the disability suffered by the claimant is fixed at 27%, after deducting 3% towards pain and sufferings.

8. In the decision in ***Pushparaj Vs. Sridevi and another in CMA No.3505 of 2024, dated 03.01.2025***, for the accident occurred in the year 2020, this Court granted a sum of Rs. 9,000/- per percentage of the disability. Therefore, following the above order, this court is inclined to fix a sum of Rs.9,000/- per percentage and accordingly a sum of Rs.2,43,000/- (27x9000) is granted towards partial permanent disability.



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9. The Accident had occurred in the year 2020. The Tribunal fixed notional income only at Rs.12,000/- per month. Having regard to the date of accident, notional income can be fixed at Rs.18,000/-. In view of the above accident, the appellant would have been out of action for nearly four months. Therefore, the appellant/claimant is entitled to get compensation of Rs.72,000/- (18,000 x 4) under the head 'loss of income'

10. As per the disability certificate, the claimant/appellant suffered fracture in her left tibia and the Medical Board had done the tests viz., range of motion, muscle strength and coordination of action and opined about disability. Taking into consideration the above aspects, the compensation of Rs.10,000/- awarded towards comfort and Amenities is enhanced to Rs.20,000/-.

11. As far as the amounts awarded by the Tribunal under the other heads are concerned, the same are just and reasonable and hence, they are confirmed.



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12. 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.	Permanent or Partial disability	1,50,000	2,43,000	enhanced
2.	Pain and sufferings	50,000	50,000	confirmed
3.	Attender Charge	20,000	20,000	confirmed
4.	Loss of Income	48,000	72,000	enhanced
5.	Medical Expenses	90,691	90,691	confirmed
6	Extra Nourishment	15,000	15,000	confirmed
7	Travel Expenses	10,000	10,000	confirmed
8	Comfort and Amenities	10,000	20,000	enhanced.
	Total	3,93,691	5,20,691	enhanced by 1,27,000

13. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,93,691/- is hereby enhanced to **Rs.5,20,691/-** together with interest at 7.5% per annum (excluding the default period of 485 days, as per order in CMP No.21578/2024) from the date of petition till the date of deposit.



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14. 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. **Since the amount enhanced by this court is well within the value of the CMA, the claimant need not pay any additional Court fees.**

19.02.2025

Index:Yes/No
Internet:Yes/No
mst

To

1. The Principal Sub Judge,
Motor Accident Claims Tribunal,
Cuddalore.



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S.SOUNTHAR, J.

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