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CMA.No.3558 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.3558 of 2021

V.Lallitha

... Appellant

Vs.

The Managing Director
Metropolitan Transport Corporation Limited
Pallavan Salai
Chennai-600 002

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order in MCOP.No.5476 of 2011 dated 22.09.2014 on the file of II Judge, Small Causes Court (Motor Accidents Claims Tribunal) , Chennai.

For appellant : Mr.AGF. Terry Chella Raja
for M/s.A.Shanmugaraj
For Respondents : Mr.M.Murali Vinoth
Standing Counsel

JUDGMENT

Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, the injured claimant has come before this Court by way of this appeal.



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2. It is not in dispute that the appellant/claimant suffered a fracture in the Tibia bone of the right leg in a road accident that had taken place on 20.01.2011. It is also not in dispute that the claimant suffered degloving injury in the left leg and heel pad avulsion due to the accident. Both the learned counsel did not advance any arguments on the question of negligence and liability and therefore, the facts necessary for deciding those questions are not adverted to in this appeal. Therefore, the appeal is confined only to the question of quantum of compensation.

3. The learned counsel for the appellant submitted that due to the accident, the victim suffered a fracture in the right leg and serious injury on the left leg. The learned counsel submits that she was employed as a tailor at the time of accident and hence, the injury suffered by her will interfere with her avocation. Though the Tribunal applied the multiplier method, the income fixed by the Tribunal at Rs.5000/- for the accident that had taken place in the year 2011 is very much on the lower side. Therefore, the learned counsel requests this court to enhance the compensation amount by fixing appropriate



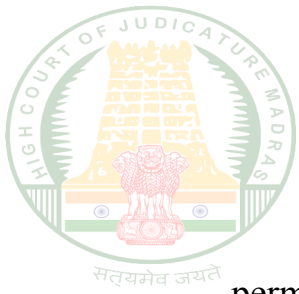
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notional income. The learned counsel further submitted that the amount awarded by the Tribunal under the head 'loss of income' for four months is very much on the lower side having regard to the treatment undergone by the injured.

4. The learned counsel for the respondent/Corporation submitted that the claimant failed to produce any acceptable proof for substantiating the income claimed by her. Therefore, the Tribunal is justified in fixing notional income of Rs.5000/- per month. The learned counsel further submitted that the Tribunal, having applied the multiplier method and assessed the compensation ought not to have granted further amount on percentage basis.

5. In order to prove the disability suffered by the injured claimant, an orthopedic surgeon was examined as PW2. He assessed partial permanent disability of the victim due to fracture of right tibia at 55%. The victim also examined the Doctor, who treated the degloving injury and avulsion in the heel pad of the left leg as PW3. He assessed disability due to the injury to the left leg at 35%. The PW3 deposed that the movement of the victim's left ankle got restricted by 50 degree. Therefore, as per the evidences of PW2 and PW3, Doctors, partial



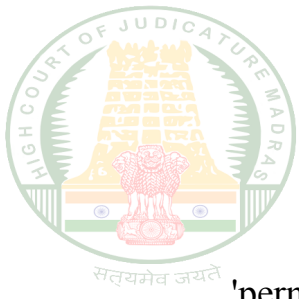
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permanent disability of the victim put together comes to 90%. If the same is confined to whole body disability, the percentage shall be taken as 30%. Therefore, this court proceeds to fix the disability suffered by the claimant at 30% instead of 25% as fixed by the Tribunal.

6. Coming to the question of income of the injured at the time of accident, the Tribunal fixed only Rs.5000/- per month. The accident had taken place in the year 2011. It is the case of the appellant that the victim was employed as a Tailor. In order to prove the same, the customer of the victim was examined as PW4. Even if no proof is produced by the victim to prove the income, the Court can fix the notional income by taking into consideration the prevailing circumstances.

7. This Court, based on the guidelines issued in *Andal and Others Vs Avinav Kannan and another* reported in *MANU/TN/6368/2018*, fixes the notional income of the injured at Rs.8500/- per month. The claimant is entitled to 10% future prospects having regard to her age which was fixed at 53 years by the Tribunal. Hence, notional income together with future prospects fixed at Rs.9350/- Therefore, the amount payable to the victim under the head



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'permanent disability' is calculated as follows:-

$$\text{Rs.9350} \times 12 \times 11 \times 30/100 = \text{Rs.3,70,260/-}$$

8. The victim undergone surgery two times and she was inpatient in the hospital for more than 41 days for both the surgeries together. Therefore, the claimant is entitled to loss of income for at least 6 months. Therefore, the amount under the head 'loss of income' for 6 months is Rs.51,000/- as against the amount fixed as Rs.20,000/- by the Tribunal for 4 months. The amount under the head 'loss of amenities' is increased to Rs. 20,000/- as against the amount fixed as Rs.15,000/- by the Tribunal. Since the amount payable to the petitioner for disability is assessed by applying multiplier method, the claimant is not entitled to any amount based on percentage method. Therefore, the amount of Rs.1,10,000/- awarded by the Tribunal by applying percentage method is set aside.

9. In view of the discussions made earlier, the award amount granted by the Tribunal is enhanced as follows:-

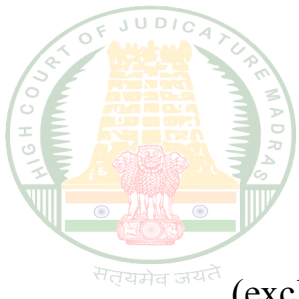
Sl.	Description	Amount	Amount	Award
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N o		awarded by Tribunal (Rs)	awarded by this Court (Rs)	confirmed or enhanced or granted
1.	Pain and Suffering	35,000/-	35,000/-	Confirmed
2.	Attendant Charges	10,000/-	10,000/-	Confirmed
3.	Extra Nourishments	10,000/-	10,000/-	Confirmed
4.	Transportation Expenses	10,000/-	10,000/-	Confirmed
5.	Permanent Disability	1,10,000/-	Nil	Set aside
6.	Loss of Income	20,000/-	51,000/-	Enhanced
7.	Damage to Clothes	1000/-	1000/-	Confirmed
8.	Medical Bills	3,75,000/-	3,75,000/-	Confirmed
9	Loss of amenities of life	15,000/-	20,000/-	Enhanced
10	Loss of earning power	1,65,000/-	3,70,260/-	Enhanced
	Total	7,51,000/-	8,82,260/-	Enhanced by Rs.1,31,260 /-

10 . With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,51,000/- is hereby enhanced to Rs.8,82,260/- The appellant/claimant is entitled to interest at the rate of 7.5% per annum



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(excluding the delay period, if any) from the date of filing of the claim petition till the date of realization. The respondent is directed to deposit the enhanced sum along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellant/claimant is entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

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Index:Yes/No
Internet:Yes/No
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To



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The learned II Judge, Small Causes Court, Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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