



CMA(MD). No.19 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.09.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE Mrs.JUSTICE L.VICTORIA GOWRI

CMA. (MD). No.19 of 2018

Hussaina

... Appellants

v.

1.Wavoo Abdeen

**2.United India Insurance Company
Through its Divisional Manager,
Office at Park Town
No.70 NSC Bose Road
Chennai.**

... Respondents.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree passed in MCOP No.929 of 2014 on the file of the Motor Accidents Claim Tribunal/Special Sub Court, Tirunelveli dated 20.02.2017.

For Appellant : Mr.S.Balasubramanian
For Respondents : Mr.G.Prabhu Rajadurai for R2
R1 - exparte



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JUDGMENT

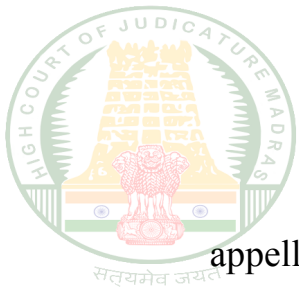
WEB COPY (Judgment of the Court was delivered by P.VELMURUGAN,J.)

The Civil Miscellaneous Appeal is directed against the common judgment and decree passed in MCOP No.929 of 2014 etc. batch on the file of the Motor Accidents Claim Tribunal/Special Sub Court, Tirunelveli dated 20.02.2017.

2. The facts in nutshell required for the disposal the appeal are as follows:

On 26.07.2014, when the appellant was travelling along with her family members in a Toyota Qualis car bearing registration No.TN 70 Z 9346 from Chennai to Tuticorin, near Sinthalakarai, due to rash and negligent driving of the driver of the car, the car capsized, in which, the appellant and the family members sustained severe injuries. The appellant sustained pelvic bone fracture and her left hand has been severely damaged and she was, therefore, admitted in a hospital and treated. Pursuant to the accident, a case in Crime No.27/2014 was registered against the first respondent/driver. The vehicle is insured with the 2nd respondent Insurance Company. For the injuries sustained, the

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appellant claiming a compensation of Rs.1,50,00,000/- has filed the claim petition.

3. In order to prove the case of the appellant, before the tribunal, P.W.1 to P.W.6 were examined and 55 documents were exhibited. Neither any witness was examined nor any documents were exhibited on the side of the respondents.

4. The tribunal, upon considering the oral and documentary evidence, had come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the vehicle. Based on the oral and documentary evidence let in before the tribunal, the disability of the appellant/claimant has been assessed at 90% and accordingly, a sum of Rs.34,21,500/- along with 9% interest has been awarded towards compensation and by fixing the liability on the 2nd respondent insurance company, the 2nd respondent was directed to pay the said compensation within a period of one month from the date of filing of the claim petition till the date of deposit. Challenging the said compensation, the appellant is before this Court.



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5. The learned counsel for the appellant assailed the award passed by the tribunal on the following grounds:

(i) Though the appellant worked in Hongkong and earned Rs. 1,12,000/-, the said aspect was not considered by the Tribunal and the income was assessed at Rs.4,500/- per month and hence, the same needs interference.

(ii) Though the appellant is taking treatment till now, for future medical expenses, Rs.2,00,000/- has been awarded, which is on the lower side. Considering the fractures sustained by the appellant, the amount awarded towards future medical expenses ought to have been increased;

(iii) Though the appellant was working in Hongkong and earned Rs.1,12,000/- per month, the tribunal had rejected the claim towards loss of income and the tribunal had not considered the salary certificate Ex.P24 produced for substantiating the salary earned by the appellant.

(iv) The tribunal has not awarded any compensation towards loss of income to the appellant;

(v) Towards medical expenses, the amount awarded is found to be very meagre and it needs to be enhanced.



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6. Per contra, the learned counsel for the 2nd respondent would submit that the Tribunal, after analyzing the salary certificate Ex.P24 produced by the appellant, had come to the conclusion that the said salary certificate was issued by the father-in-law of the appellant and the gems and jewels company was owned by the appellant's father-in-law and had rightly rejected the salary certificate and had rightly taken Rs. 4,500/- as notional income as had been held by the Hon'ble Supreme Court. As far as the medical expenses is concerned, the tribunal had rightly awarded Rs.11,43,920/-, which is found to be just and reasonable and it needs no interference. The learned counsel would further submit that considering the fractures sustained by the appellant in her hand, leg and pelvic region, the tribunal had rightly come to the conclusion by assessing the disability at 90% and had granted Rs.34,21,500/- and though the said compensation is found to be excessive, the learned counsel prays for dismissal.

7. We have considered the rival submissions and perused the materials available on record.



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8. The appellant is the claimant. It is not in dispute that pursuant to the accident that had taken place as stated supra, the appellant/claimant sustained 90% disability and as such, she had incurred considerable amount towards medical expenses. She claimed that she is said to have worked as a clerk in M/s.Jems and Jewels in Hongkong and earned Rs.1,12,000/- per month. However, the said fact has not been accepted by the tribunal for the simple reason that Ex.P.24 salary certificate was issued by the father-in-law of the claimant. Hence, a sum of Rs.4,500/- was fixed as notional income and has awarded a compensation of Rs.34,21,500/- with 9% interest and the tribunal had accordingly directed the 2nd respondent insurance company to deposit the said award. The present appeal is assailed on the sole ground of fixing monthly income.

9. It is seen that the appellant though stated that she worked as an employee of M/s.Jems and Jewels at Hongkong, however, the said company was run by the father-in-law of the appellant/claimant. Having found that the certificate was issued by the father-in-law of the appellant, the tribunal had fixed the notional income of the appellant as Rs.4,500/-. A perusal of the records it is seen that when the employment is disputed,



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the appellant has not examined any independent witness to prove his employment. However, while fixing notional income, the Hon'ble Supreme Court, in the case of **Syed Sadiq v. Divisional Manager, United India Insurance Company reported in 2014 (1) TANMAC 459**, has held that notional income to be taken as Rs.6,500/- even for a vegetable vendor. While coming to the facts of the present case, the accident had taken place during 2014. While applying the said ratio laid down in Syed Sadiq's case and upon considering the avocation of the claimant and the nature of injuries sustained by her, fixing notional income of Rs.6,000/- would meet the ends of justice. Accordingly, a sum of Rs.6,000/- is fixed as notional income. As far as the other heads are concerned, since the amount awarded by the tribunal is found to be just and reasonable, no interference is warranted to the compensation awarded on the other heads.

10. By applying the notional income as Rs.6,000/- instead of Rs.4,500/-, the compensation would be arrived at as follows:



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Sl.No.	Heads	Amount (Rs)
1	Total loss of income (6000*12+16*90%)	10,36,800/- (enhanced)
2	For Medical expenses/bills	11,43,920/-
3	Pain and suffering	1,00,000
4	Extra nourishment	50,000
5	Future medical expenses	2,00,000
6	Dependent charges during treatment	1,00,000
7	For loss of amenities	1,50,000
8	For loss of	2,00,000
9	For mental agony	2,00,000
10	For future attendant salary	2,00,000
11	Physiotherapy charges	1,00,000
12	For loss of marital life	2,00,000
		36,80,720/-

11. In the result, the Civil Miscellaneous Appeal is allowed in part and a sum of Rs.36,80,720/- has been enhanced as compensation from Rs.34,21,520/- along with 9% interest from the date of petition till the date of depositing the award amount into the Court. The 2nd respondent insurance company is directed to deposit the entire award amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit



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being made, the appellant is permitted to withdraw the entire amount, less the amount already withdrawn, if any. The 2nd respondent insurance company is permitted to withdraw the excess amount, if any. No costs.

[P.V.,J]

[L.V.G.,J]

09.09.2025

NCC : Yes/No

Index : Yes/No

RR

To

1.Motor Accidents Claim Tribunal/Special Sub Court, Tirunelveli

2.The VR Section

Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.
AND
L.VICTORIA GOWRI, J.

RR

ORDER
IN
CMA.(MD) No.19 of 2018

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