



C.M.A.No.2350 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2350 of 2019
and Cros.Obj.No.10 of 2024
and C.M.P.No.10633 of 2019

Tata AIG General Insurance Co. Ltd.,
having his office at Mayflower Castle,
1st Floor, No.72, Dr.Balasundaram Road,
Coimbatore – 641 018.

...Appellant

Vs.

1.M.Kavipriya

2.K.R.Ganesan

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 04.11.2017 made in M.C.O.P.No.119 of 2016, on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Erode.



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C.M.A.No.2350 of 2019

For Appellant : Mr.K.Vinod

For Respondents : Mr.R.Nalliappan for R1
R2 – NDW

COMMON JUDGMENT

This appeal is filed by the appellant Insurance Company and the cross objection is filed by the first respondent challenging the decree and judgment passed by the Motor Accident Claims Tribunal, (Special Sub Court), Erode in M.C.O.P.No.119 of 2016 dated 04.11.2017.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioner is the claimant, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

4.The brief fact of the case are as follows:

According to the petitioner, on 19.01.2016 at about 1.15 p.m., the petitioner was travelling as pillion rider in a motorcycle bearing



C.M.A.No.2350 of 2019

Registration No.TN.78 A.9283 which was riding by one Sekar, on Dharapuram to Ottanchatram Road, from West to East direction, while they were proceeding near Koneripatti pirivu, the first respondent drove the motorcycle bearing Registration No.TN.38.BE.7223, in a rash and negligent manner and hit against the petitioner's motorcycle. As a result, the petitioner and the rider fell down and had sustained bone fractures and grievous injuries. Soon after the accident, the petitioner was taken to the Government Hospital, Dharapuram. After first aid treatment, she was taken to Muthu Hospital, Coimbatore and underwent treatment as an inpatient for one month. A case was registered in FIR No.35/2016 under Sections 279 & 337 IPC by Mulanur Police. The petitioner filed a claim petition before the Tribunal in M.C.O.P.No.119 of 2016, the Tribunal has awarded a sum of Rs.7,35,700/- as compensation. Aggrieved by the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant submitted that the Tribunal has awarded an excess amount in respect of loss of earning



C.M.A.No.2350 of 2019

power and disability which is not sustainable. Hence, he prayed for appropriate orders.

6.Learned counsel appearing for the first respondent fairly submitted that except the loss of earning, the Tribunal has awarded the compensation which is just and reasonable. However, he accepted for fixing Rs.5,000/- per percentage of disability for 36% disability sustained by the first respondent.

7.Heard learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only for questioning the quantum of compensation.



C.M.A.No.2350 of 2019

WEB COPY

9.Before the Tribunal, the petitioner was examined as PW1, Mr.Sekar, the rider of the motorcycle was examined as PW2, Dr.P.Senthilkumar who treated the petitioner, was examined as PW3 and on the side of the petitioner, 29 documents were marked as Exs.P1 to P29. On the side of the respondents, no witness was examined and no document was marked.

10.The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.13,000/- for loss of earning, Rs.5,000/- for transport expenses, Rs.6,000/- for extra nourishment, Rs.500/- for loss damage to clothes and articles, Rs.1,50,000/- for medical expenses, Rs.50,000/- for pain and suffering, Rs.90,000/- for disability, Rs.4,21,200/- for loss of earning power and arrived at a total compensation of Rs.7,35,700/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

11.This Court directed the first respondent to appear before the Medical Board attached with the Government Hospital, Erode to assess



C.M.A.No.2350 of 2019

the disability of the first respondent. The Medical Board has assessed the disability of the first respondent and opined 36% disability. In the absence of any document, the Tribunal has awarded Rs.4,21,200/- for loss of earning which is not sustainable. This Court is inclined to fix a sum of Rs.5,000/- per percentage of disability for 36% disability sustained by the first respondent.

12.The amount awarded under the head medical expenses, in the opinion of this Court is just and reasonable. The amount awarded under the heads loss of earning, transport expenses, extra nourishment, damages to clothes & articles and pain and suffering, in the opinion of this Court is very meager and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded under the head loss of earning is enhanced to Rs.30,000/- from Rs.13,000/-. Accordingly, the amount awarded under the head transport expenses is enhanced to Rs.20,000/- from Rs.5,000/-. Accordingly, the amount awarded under the head extra nourishment is enhanced to Rs.40,000/- from Rs.6,000/-. Accordingly, the amount awarded under the



C.M.A.No.2350 of 2019

head damage to clothes and articles is enhanced to Rs.1,000/- from Rs.500/-. Accordingly, the amount awarded under the head pain and suffering is enhanced to Rs.75,000/- from Rs.50,000/-. The amount awarded under the head loss of earning, in the opinion of this Court, is excessive and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded under the head loss of earning is reduced to Rs.1,80,000/- from Rs.4,21,200/-. Though the Tribunal awarded a sum of Rs.90,000/- under the head for disability, since this Court already awarded the disability compensation under the head loss of earning, no need to award the compensation under the head for disability.

13. Accordingly, the compensation awarded by the Tribunal is re-assessed as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of earning	13,000/-	30,000/-
2.	Transport expenses	5,000/-	20,000/-
3.	Extra nourishment	6,000/-	40,000/-



C.M.A.No.2350 of 2019

4.	Damages for clothes and articles	500/-	1,000/-
5.	Medical expense	1,50,000/-	1,50,000/-
6.	Pain and suffering	50,000/-	75,000/-
7.	Disability	90,000/-	-
8.	Loss of earning power (36 x Rs. 5,000) (Disability)	4,21,200/-	1,80,000/-
	Total	Rs.7,35,700/-	Rs.4,96,000/-

14.The first respondent/claimant is entitled to a sum of Rs.4,96,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

15.The judgment and decree passed by the Motor Accident Claims Tribunal/Special Sub Court, Erode in M.C.O.P.No.119 of 2016 dated 04.11.2017, is modified to the above extent.

16.The appellant Insurance Company is directed to deposit the modified/enhanced award amount if not deposited earlier, before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment and permitted to withdraw the excess amount, if any. On





C.M.A.No.2350 of 2019

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such deposit being made, the first respondent/claimant is permitted to withdraw the amount along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

17.The first respondent /claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal.

18.The Civil Miscellaneous Appeal is partly allowed with the above terms. The cross objection filed in Cros.Obj.No.10 of 2024 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Motor Accidents Claims Tribunal,
(Special Sub Court), Erode.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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C.M.A.No.2350 of 2019

M.DHANDAPANI, J.

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C.M.A.No.2350 of 2019

10.12.2024