

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No 2527 of 2016
and

CMP No.17887 of 2016 and 21478 of 2017

Iffco-Tokio General Insurance Company Ltd.,
No.8, Old No.195, 1st and 2nd Floor,
North Usman Road,
T.Nagar,
Chennai - 600 017. ... Appellant / 2nd Respondent

versus

1. R.Chitra ...1st Respondent / Petitioner

2. M.Shanmugam ...2nd Respondent / 1st Respondent

R2 - set exparte before the Trial Court.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P. No.2555 of 2012, dated 28.03.2016 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Cuddalore.

For Appellant : Ms.K.Saraswathi for
Mr.C.R.Krishnamoorthy

For Respondents: Ms.Ramya V. Rao
for
M/s.A.N. Viswanatha Rao for R1
R2- Ex-parte

JUDGMENT

(Judgment delivered by Abdul Quddhose, J.)

The instant appeal has been filed by the Insurance Company challenging the award dated 28.03.2016 passed by the Motor Accident Claims Tribunal, Cuddalore (Chief Judicial Magistrate Court, Cuddalore) in M.C.O.P. No.2555 of 2012.

Brief facts leading to the filing of the instant appeal

2. The first respondent sustained grievous injuries as a result of an accident caused by a Motor Cycle bearing Registration No.TN-31-AE-9727 owned by the second respondent and insured with the appellant. The accident happened on 28.06.2012 and the first respondent was a pillion rider on another Motor Cycle bearing Registration No.PY-01-AE-6901, when the insured motor cycle bearing Registration No.TN-31-AE-9727 dashed against the vehicle of the injured. Due to the said collision, the first respondent had a fall and sustained grievous injuries.

3. The first respondent preferred a claim before the Motor Accident Claims Tribunal, Cuddalore in M.C.O.P. No.2555 of 2012, seeking a compensation of Rs.50,00,000/- against the appellant as well as the second respondent.

4. By an award dated 28.03.2016 passed by the Motor Accidents Claims Tribunal, Cuddalore in M.C.O.P. No.2555 of 2012, the Appellant was directed to pay the first respondent, a sum of Rs.25,44,000/- together with interest at 7.5% p.a. from the date of claim petition, till the date of deposit as compensation for the injuries sustained by her as a result of the said accident. The Tribunal has also granted right to the appellant to recover the award amount from the second respondent, who is the owner of the insured vehicle.

5. Aggrieved by the award dated 28.03.2016 passed by the Motor Accident Claims Tribunal, Cuddalore, the instant appeal has been filed by the Insurance Company.

6. Heard Ms.K.Saraswathi, learned counsel for the appellant and Ms.Ramya V. Rao, learned counsel appearing for the 1st respondent.

7. The appellant / Insurance Company has challenged the said award on the ground that there is contributory negligence on the part of the first respondent and they have also challenged the quantum of assessment of compensation by the Tribunal. According to them, the first respondent is equally responsible for the cause of the accident, as the two wheeler on which she was travelling was also driven in a rash and negligent manner. It is their case that the Tribunal ought not to have applied multiplier method in assessing the compensation as the first

respondent was still continuing with the existing job, even after the accident and was earning the same salary as she was getting before the accident. The appellant has also challenged the award on the ground that the assessment of compensation under various heads by the Tribunal is excessive. It is also their case that the Tribunal ought not to have assessed the disability of the first respondent @ 45%, based on the disability certificate (Ex.P11) issued by the Doctor (PW2).

8. This Court has perused and examined the impugned award. FIR (Ex.P1) has been registered only against the rider of the motor cycle bearing Registration No.TN-31-AE-9727 for the offences under Sections 279 and 337 of IPC. FIR (Ex.P1) and Charge Sheet (Ex.R6) reveals as to how the accident had happened. On scrutiny of Ex.P1 and Ex. R6, it is clear that only due to the rash and negligent driving by the rider of the second respondent's vehicle, the accident had happened. M.V.I. Report (Ex.P2) of the Motor cycle involved in the accident reveals that the accident could not have happened due to any mechanical fault. No contra evidence has been produced by the appellant to disprove the claim of the first respondent that only due to the rash and negligent driving by the rider of the insured Motor Cycle owned by the second respondent, the accident happened. Therefore, we are of the considered view that the finding of the Tribunal that the accident happened solely due to the rash and negligent driving by the rider of the insured vehicle bearing Registration No.TN-31-AE-9727 is a correct finding. It can be conclusively inferred that there is no contributory negligence on the part of the first respondent / claimant, who was only a pillion rider.

9. This Court has perused and examined the impugned award. As seen from the impugned award, the Tribunal has not deducted any amount towards income tax from the annual income of the first respondent. As per the settled principles of law 10% will have to be deducted as income tax. Further, the Tribunal has also awarded loss of income for two months amounting to Rs.91,870/-, which the first respondent is not entitled to, since she is a Government Servant and has been continuously getting her salary, even after the accident. Excepting for the non deduction of income tax and awarding compensation under the head loss of income for two months, insofar as other heads of compensation awarded by the Tribunal are concerned, it does not call for any interference.

10. In the result, the award passed by the Tribunal is modified from Rs.25,44,000/- to Rs.22,70,200/- and the same is detailed hereunder :-

Heads	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Loss of earning capacity * (Rs.45,935/- x 12 - 1/3 = Rs.5,51,220.00 - 1/3 = Rs.3,67,480 x 45% x 11 = Rs.18,19,026/-) # (Rs.45,935/- x 12 -1/3 Rs.5,51,220.00 - 1/3 = Rs.3,67,480/- 10% of Rs.3,67,480 = Rs.36748/- (Rs.3,67,480 - 36,748 = Rs.3,30,732 x 45/100 = Rs.16,37,123/-)	18,19,026/- *	16,37,123/- #
Transport	10,000/-	10,000/-
Special diet	10,000/-	10,000/-
Loss of income 2 months	91,870/-	-
Pain and sufferings	17,500/-	17,500/-
Medical expenses	3,00,588/-	3,00,588/-
Attender charges	10,000/-	10,000/-
Loss of amenities for whole body	1,35,000/-	1,35,000/-
Future Medical expenses	1,50,000/-	1,50,000/-
Total	25,43,984/-	22,70,211/-
R/off	25,44,000/-	22,70,200/-

11. As regards the direction of the Tribunal permitting the appellant to pay the compensation to the first respondent and on such payment, recover the same from the second respondent is concerned, we are confirming the said finding.

12. Accordingly, the appellant / Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as ordered by this Court, less the amount, if any, already deposited, to the credit of MCOP No.2555 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent /

claimant, through RTGS, within a period of two weeks thereafter.

13. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vsi2

To :

- 1) The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Cuddalore.
- 2) The Section Officer,
V.R. section, High Court, Madras - 104.

+1 cc to M/s.C.R.Krishnamoorthy, Advocate, S.R.No.77507

+2 ccs to M/s.A.N.Viswanatha Rao, Advocate, S.R.No.77591

NRL (CO)
SSM(17/10/2019)

C.M.A. No 2527 of 2016

सत्यमेव जयते
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