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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

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THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2235 of 2010

The New India Assurance Co. Ltd.,
No.45, Second Line Beach,
Moores Street, Chennai - 600 001.

... Appellant/2nd Respondent

Vs.

1. T.Sornagandhi Ammal

... 1st Respondent/ Petitioner

2. S.Rajakumari

... 2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree made in MACTOP. No.314 of 2006 on the file of the Motor Accident Claims Tribunal(II Judge, Court of Small Causes), Chennai dated 18.01.2010.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No Appearance.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 18.01.2010 passed in MCOP.No.314 of 2006 by the Motor Accident Claims Tribunal(II Judge, Court of Small Causes), Chennai.

2. The case in brief are as follows:

On 23.11.2003 at about 19.30 hours, the petitioner was



waiting in Maruthi Alto Car bearing Registration No.TN 20-K-5809 for travelling towards Chennai at GST Road. At that time, the Mini Van bearing Registration No.TN 20 Z 3299 was driven by its driver in a rash and negligent manner and dashed against the car, as a result of which, she sustained grievous injuries.

3. The learned counsel for the appellant is the counsel for the Insurance Company. The Insurance Company had come in appeal against the award of compensation under the head loss of earning which according to the appellant is very much excessive because the age of the injured was 68 years. Therefore, the claim that she was earning cannot be accepted since she has to be taken care of by the children. Though it is claimed that the injured was doing saree business, for proof of avocation, no document was produced under the nominal claim of Rs.5,000/- made in the claim petition. She had undergone treatment in the hospital for a period of 13 days. She has also suffered loss of income only for 15 days and hence, Rs.5,000/- is not to be considered.

4. Considering the submission of the learned counsel for the appellant/Insurance Company, this Court feels that the notional income at Rs.2,000/- is fixed per month. For a period of one year, she has not attended her work. Therefore, Rs.24,000/- is the annual loss of income. Regarding the other head, there is no dispute. Mental agony cannot be sustained as it is granted, only in the case of death to the spouse or minor children of the claimant. Here the Petitioner/Claimant is injured victim. Therefore, mental agony is not attracted and Rs.10,000/- under that head is struck off. The amount awarded under that the other heads is accepted, only Rs.80,000/- towards the loss of earning is reduced as Rs.24,000/-. Regarding the assessment of the evidence by the Tribunal, the learned Counsel for the Insurance Company submits that they had produced evidence through witness R.W.1 to R.W.3 and Ex.R1 to Ex.R5 thereby notice directing the insured to produce the driving licence of the driver of the vehicle but he had not produced driving licence. Private investigation was engaged by the Insurance Company to know the truth of the accident and gather other details. As per his report also the driver of the vehicle did not possess driving licence at the time of accident. Therefore, directing the Insurance Company to pay compensation award to the Petitioner/Claimant amounts to violation of the rulings of



Hon'ble High Court and Hon'ble Supreme Court. As per the learned counsel for the appellant, on that ground also, the award is attacked by the Insurance Company, who is the appellant herein. Therefore, the award is reduced and the Insurance Company is directed to recover the award from the owner of the vehicle, who had failed to furnish the driving licence of the driver at the time of accident in spite of notice by the Insurance Company.

5. Since the amount awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Earnings	80,000/-	24,000
2	For Transport Expenses	5,000	5,000
3	For Extra Nourishment	5,000	5,000
4	For Medical Expenses	40,000	40,000
5	For Mental Agony to the petitioner	10,000	-
6	For Future Medical Expenses	10,000	10,000
7	For Pain and Sufferings	30,000	30,000
8	Permanent Disability	45,000	45,000
9	Total	2,25,000	1,59,000

Thus, the award of the Tribunal is reduced from Rs.2,25,000/- to Rs.1,59,000/-. This amount has to be apportioned as per the ratio adopted by the Tribunal. The appellant/Insurance Company shall deposit the modified award amount, after adjusting the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant/Insurance Company is permitted to withdraw excess amount, if any lying in the Court deposit. On such deposit by the Insurance Company, the first respondent/claimant is permitted to withdraw in accordance with law, less the amount if any already withdrawn by her. As already stated that the Insurance Company



is entitled to recover the award amount from the owner of the vehicle.

Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes), Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.41631

C.M.A.No.2235 of 2010

KV(CO)
SB(16/09/2021)