

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.962 of 2014

and M.P.No.1 of 2014

IFFCO-TOKIO General Insurance Company ltd.,

Branch Office Address :

No.4/1044, Coimbatore Main Road,

Karur,

Local Office Address :

No.195, Thiruvankidasamy Road,

R.S.Puram,

Coimbatore - 641 002. : Appellant/5th Respondent

vs.

1. Bhuvaneswari : 1st Respondent/Claimant

2. Periyadurai

3. Kavitha

4. Lakshmipriya

5. Elmech Automation,

No.4/37-A, Nethathi Nagar,

Sanganoor Main Road,

Coimbatore - 27. : Respondents 2 to 5/Respondents 1 to 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.2314 of 2012, dated 05.11.2013 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant : Mr.E.Rajadurai

for Mr.N.Vijayaraghavan

For Respondents : R1,R2 & R4 - No such address

R3 & R5 - Served -

No appearance.

JUDGMENT
(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 05.11.2013 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore in MCOP No.2314 of 2012.

2. The first respondent /claimant sustained injuries on 26.04.2012 as a result of an accident involving two vehicles. One of the vehicle is a two wheeler bearing Registration No.TN-38-PA-1755 insured with the appellant / Insurance company, in which the first respondent / claimant was travelling as a pillion rider and the other vehicle was a four wheeler / goods vehicle bearing Registration No.TN-39-PC-3906. Due to the collision between the two vehicles, the first respondent / claimant sustained injuries for which, she preferred a claim before the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore in MCOP No.2314 of 2012 seeking compensation of Rs.5,00,000/-.

3. The Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore under the impugned common award fixed the contributory negligence of both the vehicles in the ratio of 50 : 50 and directed the appellant / Insurance Company to pay 50% of the assessed compensation amount. The Tribunal has fixed the total compensation payable to the first respondent at Rs.4,48,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Compensation for partial permanent disability (35 x 2,000/-)	70000
Loss of income 6 x 3500	21000
Medical expenses	317000
Pain and suffering	20000
Extra nourishment	5000
Transport	5000
Total	438000

4. The Tribunal has committed a calculation error while assessing the total compensation payable to the first respondent /claimant. Thus, the total compensation under the impugned award works out to Rs.4,38,000/- and not Rs.4,48,000/-.

5. The appellant / Insurance Company has filed this appeal on the following grounds :

The Tribunal has erroneously fixed the contributory negligence on the rider of the motor cycle insured with the appellant / Insurance Company

at 50%. According to them, the opposite goods vehicle is alone responsible for the cause of the accident.

b) the quantum of compensation awarded by the Tribunal is excessive.

6. Heard Mr.E.Rajadurai, learned counsel for the appellant. Respondents 3 and 5 have been duly served and their names have also been printed in the cause list, today but there is no representation on their side. Notice sent to the first, second and the fourth respondents have been returned with the endorsement "no such address". Since this Court is going to confirm the award of the Tribunal, the notice to the first, second and fourth respondents are dispensed with.

7. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

8. Before the Tribunal, the first respondent / claimant has filed nine documents which were marked as Exs.P1 to P9 and two witnesses were examined on her side viz., the first respondent / claimant herself as PW1 and the Doctor who examined her as PW2. On the side of the appellant / Insurance company, two documents were filed, which were marked as Exs.R1 and R2 and one witness was examined viz., their Assistant Executive Legal as RW1. A material object viz., the X-ray of the first respondent / claimant was also marked as MO-1 by the Tribunal.

9. With regard to the first contention raised by the appellant is concerned, the same is rejected by this Court for the following reasons :-

It was an head on collision between the motor cycle insured with the appellant / Insurance Company and the goods vehicle, which was coming in the opposite direction. Even though the FIR has been registered against the goods vehicle, the complaint has not been given by an independent person. The Tribunal has taken note of the entire evidence available on record and has also taken note of the fact that being an head on collision, both vehicles are at fault and therefore, fixed the contributory negligence in the ratio of 50:50 between the two vehicles.

This Court does not find any infirmity in the findings of the Tribunal regarding fixation of contributory negligence.

10. With regard to the second contention raised by the appellant / Insurance Company that the quantum of compensation awarded by the Tribunal is excessive is concerned, the same is also rejected for the following reasons :-

a) The accident happened in the year 2012. The Tribunal has awarded Rs.4,48,000/- as compensation to the first respondent / claimant. The first respondent / claimant has sustained Fracture on her vertebra and mid shaft right humerus and she was hospitalised for a long period of time, as seen from the Discharge summary (Ex.P7) issued by the hospital. The medical bill alone works out to Rs.3,17,000/-, as seen from Ex.P8. The total compensation awarded by the Tribunal is Rs.4,48,000/-. This Court is of the considered view that the compensation awarded by the Tribunal cannot be considered to be excessive as alleged by the appellant / Insurance Company that too when the appellant / Insurance Company was directed to pay only 50% on the total compensation to the first respondent / claimant.

13. In the result, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. The Appellant / Insurance Company is directed to deposit the 50% award amount i.e. Rs.2,19,000/- (50% of Rs.4,48,000/-, after deducting Rs.10,000/- towards calculation error) awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No. 2314 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Coimbatore, 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.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2

To

The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Coimbatore.

Copy to: The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.962 of 2014

VBA (CO)
CSR 21.04.2021



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