



CMA No.141 of 2020

C.M.A.No.141 of 2020

WEB CODE: **R.SUBRAMANIAN, J**

Today, the matter is posted under the caption “For Being Mentioned” at the instance of the learned counsel appearing for the third respondent Insurance Company.

2. Though the Insurance Company has exonerated from liability, the operative portion of the order, viz. para 11 reads as follows:

“11. In all other aspects, the award granted by the Tribunal is confirmed. This appeal is therefore, partly allowed, the compensation granted by the Tribunal is enhanced to Rs.2,21,000/-. The Insurance Company is directed to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No.1003 of 2017 within a period of 8 weeks from the date of receipt of a copy of the judgment. No costs. The claimant is permitted to withdraw the enhanced compensation deposited.”



CMA No.141 of 2020

WEB COPY 3. The following sentence which appears in para 11 needs to be deleted to bring the operative portion of the order in tune with the main judgment. Hence the following sentence in para 11 will stand deleted.

“The Insurance Company is directed to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No.1003 of 2017 within a period of 8 weeks from the date of receipt of a copy of the judgment.”

4. The Registry is directed to carry out the correction in the said judgment and issue fresh order copy forthwith.

24.02.2023

jv



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CMA No.141 of 2020

R.SUBRAMANIAN, J

jv

C.M.A.No.141 of 2020

24.02.2023



CMA No.141 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.141 of 2020

Latha

..Appellant

Vs.

1.Mathaian

2.Govindan

3.The United India Insurance Company Limited.,
Divisional Office HUB, Ranga Building,
Peramanur Main Road, Peramanur,
Salem – 636 007.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.1003 of 2017, dated 18.03.2019 on the file of the Motor Accident Claims Tribunal / Special Sub-ordinate Judge No-II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Ms.Janani for R3
for Mr.J.Chandran



CMA No.141 of 2020

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J U D G M E N T

This appeal is against the award of the Motor Accidents Claims Tribunal / Special Sub-ordinate Judge No.II, Salem made in MCOP.No.1003 of 2017 in and by which, the Tribunal has awarded a sum of Rs.1,73,540/- as compensation for the injuries suffered by the claimant in a motor accident that occurred on 06.07.2016.

2.According to the claimant, while she was travelling as a pillion rider in motor cycle bearing registration No.TN-33-AW-3982 on Vaiyappamalai to Mallasamudram main road near Kattupalayam, the motor cycle bearing registration No.TN-28-AZ-3890 driven by its driver in a rash and negligent manner dashed against the motor cycle in which, the claimant was travelling. As a result of the accident, the claimant has suffered greivous injuries. She is a Tailor by profession and she was aged about 48 at the time of the accident.

3.The claim petition was filed under Section 163(A) of the Motor Vehicles Act seeking compensation from the owners of the two wheelers



CMA No.141 of 2020

and the 3rd respondent / Insurance Company, the Insurer of the vehicle in which, the claimant was travelling as a pillion rider. The Tribunal, on an assessment of the evidence concluded that the accident occurred due to the rash and negligent driving of the driver of the vehicle bearing registration No.TN-28-AZ-3890 owned by the 1st respondent. The Tribunal also found that the policy of Insurance issued to the vehicle bearing registration No.TN-33-AW-3982 in which, the insured Claimant was travelling was only an Act Policy and therefore, it will not cover the injuries suffered by the claimant as a pillion rider in that vehicle. Hence, the Tribunal awarded compensation under Section 166 of the Motor Vehicles Act against the 1st respondent, who was the owner of the vehicle bearing registration No.TN-28-AZ-3890.

4.On the quantum, the Medical Board has assessed the disability that was caused to the claimant because of the accident at 10% therefore, the Tribunal awarded a sum of Rs.30,000/- towards permanent disability at Rs.3,000/- per percentage of disability, Rs.10,000/- towards pain and suffering, Rs.15,000/- towards loss of amenities in life, Rs.78,040/- towards



CMA No.141 of 2020

medical expenses, Rs.15,000/- towards of loss of earning at Rs.7,500/- for a period of two months, Rs.5,000/- for transportation, Rs.10,000/- for extra nourishment, Rs.10,000/- for assistance and Rs.500/- for damages to dress. In all, the Tribunal awarded a sum of Rs.1,73,540/-. Aggrieved by the said award, the claimant has come up with this appeal.

5.I have heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant and Ms.Janani representing Mr.J.Chandru, learned counsel appearing for the 3rd respondent. The 1st respondent has remained exparte before the Tribunal and hence, notice to him is dispensed with. The 2nd respondent though served, is not appearing either in person or through counsel.

6.Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant would vehemently contend that the Tribunal ought to have awarded compensation under 163(A) and ought not to have exonerated the Insurance Company namely, the 3rd respondent. He would further add that the compensation awarded is on the lower side. According to him, this



CMA No.141 of 2020

Court in **M.Chinnathambi Vs. S.Deepa and another** reported in **2020 (1)**

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TN MAC 617 has awarded a compensation of Rs.4,000/- per percentage of disability and therefore, the Tribunal was not right in granting of Rs.3,000/- per percentage of disability. He would also submit that the award of Rs.10,000/- towards pain and suffering is very meagre as the claimant was hospitalized nearly 51 days and underwent three surgeries in the course of the treatment. He would also submit that the loss of income for the period should have been granted at least for three months and grant of loss of income for a period of two months is on the lower side.

7.Ms.Janani, learned counsel for the 3rd respondent would contend in as much as the 3rd respondent has been exonerated she has nothing to agitate on the quantum of compensation. She would submit that the policy of Insurance for the vehicle namely, TN-33-AW-3982, in which the claimant was travelling, being an act policy, the Insurance Company cannot be made liable for the injuries caused to the claimant. Therefore, according to her, the Tribunal has rightly chosen to make the award under Section 166 as against the 1st respondent, who was the owner of the offending vehicle namely, TN-28-AZ-3890. I have considered the rival submissions.



CMA No.141 of 2020

8.As regards the liability of the Insurance Company, it is clear that the Insurance Company cannot be made liable, since it is only an act policy and it does not cover injury caused to the rider of the vehicle. The Tribunal, on the basis of the evidence has concluded that the accident was caused because of the rash and negligent driving of the vehicle bearing registration TN-28-AZ-3890 and therefore, the 1st respondent, who is the owner of the vehicle alone is liable to pay compensation. In the absence of the Insurer of the said vehicle as a party to the proceeding, the Tribunal rightly granted compensation only as against the 1st respondent alone exonerating, the respondents 2 and 3. I therefore, do not see any ground to interfere with the said conclusion of the Tribunal.

9.On the quantum, I see some reason in the contentions of the learned counsel for the appellant. As rightly pointed out by him, in **M.Chinnathambi Vs. S.Deepa and another** reported in **2020 (1) TN MAC 617**, this Court has awarded a compensation of Rs.4,000/- per percentage on disability. In the case on hand, disability has been assessed at 10% by the Medical Board therefore, the compensation granted under the head of



CMA No.141 of 2020

permanent disability is enhanced to Rs.40,000/- from Rs.30,000/-. It is seen from the records, namely, the discharge summaries that the claimant had been hospitalized for 51 days and she has undergone three different surgeries therefore, award of Rs.10,000/- towards pain and suffering is really on the lower side. I am of the opinion that the award of Rs.40,000/- towards pain and suffering will be just compensation. The Tribunal has awarded a sum of Rs.15,000/- towards loss of earning during the period of treatment and thereafter, when the claimant was prevented from doing her regular work. The Tribunal has awarded loss of income for a period of two months as compensation. I find that it is very low.

10. Taking into account the fact that the claimant was hospitalized for at least 51 days, loss of income for a period of three months would be just compensation. Therefore, compensation awarded under the head of loss of income is increased to Rs.22,500/- from Rs.15,000/-. I do not find any ground to interfere with the quantum fixed on the other heads. The compensation granted by the Tribunal is re-fixed as follows:-



CMA No.141 of 2020

Headings		Amount in Rs.
1)	Permanent Disability (10% X Rs.4,000)	40,000/-
2)	For Pain and suffering	40,000/-
3)	For Loss of Amenities	15,000/-
4)	For Medical Expenses	78,040/-
5)	Loss of Income (during treatment period) (Rs.7,500 X 3)	22,500/-
6)	Transport Expenses	5,000/-
7)	Extra Nourishment	10,000/-
8)	For cost of Assistance	10,000/-
9)	For loss of dress	500/-
Total		2,21,040/-
Rounded off to		Rs.2,21,000/-

11. In all other aspects, the award granted by the Tribunal is confirmed. This appeal is therefore, partly allowed, the compensation granted by the Tribunal is enhanced to Rs.2,21,000/-. The Insurance Company is directed to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No.1003 of 2017 within a period of 8 weeks from the date of receipt of a copy of the judgment. No costs. The claimant is permitted to withdraw the enhanced compensation deposited.

18.11.2021

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Index:No
Internet:Yes
Speaking



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CMA No.141 of 2020

To:-

1.The Motor Accident Claims Tribunal,

Special Sub-ordinate Judge No-II, Salem.

2.The United India Insurance Company Limited.,
Divisional Office HUB, Ranga Building,
Peramanur Main Road, Peramanur,
Salem – 636 007.



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CMA No.141 of 2020

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