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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.12.2020

Judgment Delivered on : 12.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2520 of 2012

J.Savithiri

W/o. Jagadeeswaran

... Appellant /Petitioner

Vs.

1. S.Sengottuvel

S/o. Sellappa Gounder

2. The National Insurance Company Limited,

DOI, Iind Floor, LRN Complex,

Saradha College Road, Salem - 7.

First Respondent set Exparte

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.527 of 2008 dated 14.02.2011 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : Ms.R.Sree Vidhya for R2.
R1-Exparte

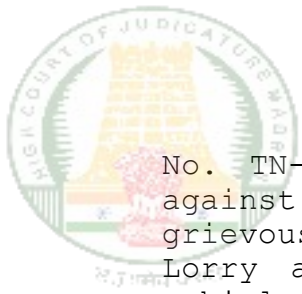
JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 14.02.2011 passed in MCOP.No.527 of 2008 by the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Salem.

2. The case in brief are as follows:

On 15.02.2008 at about 11.30 hours, while the appellant was a pillion rider of the two wheeler driven by her neighbour/Ramakrishnan who had driven the Bajaj CT Motor Cycle bearing Registration No. TN - 30-V-8406 on the Ariyanur to Omalur Road near Vairam Cofee Bar, a lorry bearing Registration



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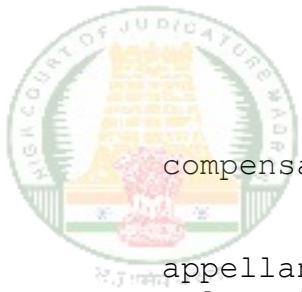
No. TN-34-E-0834 came in a rash and negligent manner, dashed against the petitioner, as a result of which, she sustained grievous injuries. The first respondent is the owner of the Lorry and the second respondent is the Insurer of the said vehicle. The first respondent remained ex-parte before the Tribunal.

3. Mr.K.Kuppusamy, the learned counsel for the appellant submitted his arguments. As per his submissions, the appellant herein/Savithiri was the claimant before the Motor Accident Claims Tribunal(Principal Subordinate Judge), Salem and she has preferred this appeal seeking enhancement of compensation. The learned counsel for the appellant/claimant submitted that the appellant 45 years old lady and she was a pillion rider. He further submitted that the Tribunal has not awarded under the head "Pain and Sufferings" and "Extra Nourishment". Appellant took treatment from 15.01.2008 to 23.02.2008 and the medical records were also produced from the Gokulam Hospital. Exs.P8 to P.12 are the relevant documents (i.e., CT Scan and disability certificate) on the side of the appellant/claimant. The learned counsel for the appellant submitted that the Motor Accident Claims Tribunal had failed to appreciate the facts in the proper perspective and failed to grant just compensation to the claimant. The Tribunal has failed to appreciate that the appellant herein suffered 25% disability due to the injuries. The Tribunal has failed to award any amount under the heads, "Pain and sufferings" and "Extra Nourishment". The Tribunal has failed to see that the discharge summary shows that the disability of the claimant is 25%. The Tribunal had mechanically granted Rs.25,000/- under the head of " No fault liability".

4. Ms. R.Sree Vidhya, learned counsel for the second respondent/ Insurance Company has submitted her arguments. As per her submissions, the Motor Accident Claims Tribunal had properly appreciated the facts of the case, in the light of the reported rulings of the Hon'ble Supreme Court and Hon'ble High Court regarding the disability in claimants cases. She further submitted that the appellant/claimant is a pillion rider and the entire fault is on the part of the rider of the two wheeler and therefore, the Tribunal awarded the compensation under the head "No Fault Liability. She further submitted that there is no discussion about the injury and the Doctor who treated the claimant was not examined. This appeal lacks merits and it has to be dismissed.

5. Points for consideration

Whether the appellant/claimant before the Motor Accident Claims Tribunal, Salem is entitled to enhancement of the



compensation.

6. Perused the claim petition filed by the appellant/claimant before the Motor Accident Claims Tribunal, Salem in MCOP.No.527/2008, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal.

7. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the accident had taken place on 15.02.2008 at about 6.15 p.m, while the appellant was a pillion rider of the two wheeler driven by her neighbour/Ramakrishnan who had driven the Bajaj CT Motor Cycle bearing Registration No. TN - 30-V-8406 on the Ariyanur to Omalur Road near Vairam Cofee Bar. At that time, a lorry bearing Registration No. TN-34-E-0834 came from behind another lorry, which was parked. The lorry was constantly coming in the path of the two wheeler. The two wheeler rider swerved and hit against the parked lorry due to which the appellant herein and her neighbour sustained grievous injuries. The appellant herein sustained depressed fracture of frontal bone and grievous injuries on her Fore Head, Brain Contusion fracture of her Nasal Bone and multiple injuries all over the body. She was immediately taken to Sri Gokulam Hospital, Salem for treatment.

8. On perusal of the order/Judgement passed by the Motor Accident Claims Tribunal, it is found that the Motor Accident Claims Cases were filed by the two wheeler rider by name Ramakrishnan in MCOP.No.503/2007 and the pillion rider/Savithiri was in MCOP.No.527 of 2008. Both the petitions were taken together on the same day for enquiry and disposed of by a common order. The petition filed by two wheeler rider Ramakrishnan was dismissed as he himself of the tort-feasor and in the petition filed by the appellant herein/Savithiri as a pillion rider, compensation of a sum of Rs.25,000/- was granted under the head "No Fault Liability" only. As per the evidence, the Motor Accident Claims Tribunal had appreciated the facts properly. Since the claimant herein was a pillion rider driven by her neighbour/Ramakrishnan who had collided with the parked lorry and therefore, the Motor Accident Claims Tribunal dismissed the claim petition filed by the two wheeler rider.

9. It is found that the award passed by the Tribunal is acceptable and reasonable and the award of the Tribunal only under the head of "No Fault Liability" to the pillion rider who was the appellant herein is justified. Therefore, the appellant herein is not entitled to any enhancement.

10. The point for consideration is answered in favour of the Insurance Company and against the appellant/claimant herein.



In the result, this Civil Miscellaneous Appeal is dismissed. No Costs. The second respondent/Insurance Company is directed to deposit the total compensation of Rs.25,000/- with accrued interest and costs as determined at by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited. On such deposit, the appellant/claimant is permitted to withdraw in accordance with law, less the amount if any already withdrawn by her.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Salem.
2. The Section Officer,
V.R Section,
High Court, Madras.

C.M.A.No.2520 of 2012

SSD(CO)
GN(13/09/2021)