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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.508 of 2020

(Through Video Conferencing)

Jayachitra

... Appellant/Petitioner

vs.

1.Premalatha

2.United India Insurance Co., Ltd.,

Divisional Office III, Arjuna Towers,

2nd Floor, D.No.248/164, Cherry Road,

Salem 636 301.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.10.2019 made in M.C.O.P.No.32 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court) Tiruchengodu.

For Appellant : Mr.T.S.Arthanareeswaran

For 1st Respondent : No Appearance

For 2nd respondent : Ms.Harini for
M/s.M.B.Gopalan

J U D G M E N T

The claimant is the appellant in this appeal. She is aggrieved by the impugned order and decree dated 18.10.2019 passed by the Motor Accident Claims Tribunal (Sub Court) Tiruchendgoe in M.C.O.P.No.32 of 2015

2. By the impugned Judgment and Decree, the Tribunal has computed the compensation of Rs.99,670 /- out of which, 20% towards has been deducted towards contributory negligence on the part of the appellant and thus the Tribunal has awarded a compensation of Rs.79,736/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of payment, to the appellant/claimant.



3. The break up of the amount awarded by the Tribunal are summarised below:-

S.No.	Heads	Amount awarded by the Tribunal
1	Permanent disability	Rs. 15,000/-
2	Pain and sufferings	Rs. 10,000/-
3	Loss of income	Rs. 15,000
4	Transport to hospital	Rs. 5,000/-
5	Attender charges	Rs. 5,000/-
5	Extra nourishment	Rs. 5,000/-
6	Medical expenses	Rs. 44,670/-
	Total	Rs. 99,670/-
	Less: 20% negligence on the part of the appellant	Rs. 19,934/- ----- Rs. 79,736/- -----

4. Aggrieved by the said order, the appellant-claimant has filed the present appeal for enhancement of compensation.

5. The case of the appellant is that on 28.03.2014 at about 4.00 p.m. when the appellant was travelling in a bus bearing Reg.No.TN. 30.AT.7585 near Ayouhiapatnam at SPM hospital, the driver of the bus allegedly drove the bus in a rash and negligent manner and hit against the lorry, as a result of which, the appellant sustained grievous injuries.

6. The learned counsel for the appellant submits that the Tribunal erred in fixing 20% of the contributory negligence on the part of the appellant. He further submits that the tribunal also ought to have awarded towards medical expenses incurred by the appellant and therefore prayed for modifying the award of the Tribunal.

7. Defending the impugned Judgment and decree, the learned counsel for the second respondent submits that the appellant was responsible for the injury suffered by her and therefore 20% contributory negligence on the passenger travelled by the insured bus.

8. I have considered the arguments advanced by the

learned counsel for both sides and I have perused the impugned



Judgment and decree and exhibits marked before the Tribunal and prescriptions of the deposition of the witnesses of the appellant and the 2nd respondent.

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9. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding of the insured bus belonging to the first respondent but has fixed 20% contributory negligence on the part of the appellant and directed the second respondent-Insurance Company, being the insurer of the bus to pay a sum of Rs.76,736/- towards 80% of the award amount as compensation to the appellant.

10. Ex.P1/R.1- FIR states that the accident occurred when the insured bus tried to overtake a lorry which was proceeding in front of the bus. Whereas, Ex.R2 - Final Report, seems to indicate that the lorry came from the opposite direction and that the appellant was at fault inasmuch as she held her hand outside window, as a result of which, she suffered injuries. Both the appellant and the 2nd respondent have not filed any accident sketch. The manner in which the accident has taken place was not been explained either in Ex.P.1/R1-FIR or in the Final Report- Ex.R2. Nevertheless, the deposition of the witnesses indicate that there was a collision from a lorry which was coming from the opposite direction indicating that either the driver of the bus was negligent inasmuch as he should not cross the road margin. It appears that the driver of the insured bus fixed over taking a vehicle in front of it when the accident took place. The fact that there was a collision between the lorry and the insured bus comes out from the deposition of the witnesses. Therefore, I am inclined to conclude that there was no justification by fixing 20% contributory negligence on the part of the appellant.

11. Under such circumstances, the impugned Judgment and decree fixing 20% contributory negligence on the part of the appellant is set aside. Accordingly, the 2nd respondent Insurance Company is liable to pay entire amount of compensation of Rs.99,670/- determined by the Tribunal to the appellant.

12. The 2rd respondent Insurance Company is therefore directed to deposit the aforesaid amount of compensation together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.



13. On such deposit, the appellant/claimant is permitted to withdraw the aforesaid amount of compensation, less any amount already withdrawn, by filing suitable application before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

Sd/-
Assistant Registrar(Spl Cell CJ Conf)

//True copy//

Sub Assistant Registrar

kkd

To

The Subordinate Judge,
The Motor Accident Claims Tribunal
Tiruchengodu.

Copy To

The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.508 of 2020

AJS (CO)
GMY(08/11/2021)