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C.M.A.No.418 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 418 of 2018
[video conferencing]

Thenmozhi

.. Appellant

Versus

1.Kalaiselvi

2.M/s. United India Insurance Company Ltd.,
Divisional Office No.3, Arjuna Towers,
No.248/164, Cherry Road,
Salem – 613 001.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree dated 09.01.2017 made in M.C.O.P.No.1913 of 2014, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem.

For Appellant	:	Mr.S.P.Yuaraj
For R1	:	Dr.P.Jagadeesan
For R2	:	Mr.C.Paranthaman

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the portion of the award dated 09.01.2017, passed in M.C.O.P.No.1913 of 2014, on the file of the Motor Accident Claims Tribunal, III Additional District Court,



C.M.A.No.418 of 2018

Salem in so far as it relates to fixing 50% contributory negligence on the part of the driver cum owner of the two wheeler in which the appellant was riding pillion as well as for enhancement of compensation.

2. The appellant is the claimant in M.C.O.P.No.1913 of 2014, on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem. She filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by her in the accident that took place on 10.06.2014.

3. According to the appellant, on 10.06.2014, at about 18.10 hours, while she was traveling as a pillion rider in TVS XL Moped, bearing Registration No.TN 54 E 6991, which was driven by her husband viz., Idumban (since deceased) along with one Arumugam on the extreme left side of the road in Valasaiyur to Veeranam Main Road. When the said vehicle was nearing Thailanoor bus stop, a lorry bearing registration No.TN 54 2900 owned by the 1st respondent and insured with the 2nd respondent was proceeding in front of the two wheeler. According to the appellant, the driver of the lorry, due to rash and negligent driving of the vehicle had applied sudden brake without any reasonable cause. As a result of such act of the



driver of the lorry, the driver of TVS XL Moped caught unaware and dashed against the rear side of the lorry. In the impact, the appellant was thrown out and fell down on the road which resulted in her sustaining grievous injuries in hand, head and all over the body. Immediately, she was taken to the Government Mohan Kumaramangalam Medical College hospital, Salem for taking treatment. Therefore, the appellant has filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation against the respondents, being the owner and insurer of the lorry respectively.

4. The 2nd respondent/Insurance Company, being the insurer of the lorry belonging to 1st respondent, filed counter statement before the Tribunal and denied all the averments made by the appellant. According to the 2nd respondent, the accident had not occurred as alleged by the appellant/claimant. The driver of the lorry drove the vehicle slowly and carefully. However, the rider of the TVS XL moped bearing Registration No.TN 54 E 6991 driven it negligently. In fact, at the time of accident, apart from the driver, two other persons including the appellant were occupants of the vehicle (triples). In view of the same, when the driver of the lorry applied brake, the driver of the two wheeler could not exercise reasonable control or caution. Therefore, due to the negligent driving of the driver of the two wheeler, the accident had



C.M.A.No.418 of 2018

occurred. Further, it is stated that the driver of the lorry belonging to 1st respondent did not hit either the appellant or the motor-cycle in which she was riding pillion. Therefore, the driver of the lorry belonging to 1st respondent has not involved in the said accident and hence, the 2nd respondent is not liable to pay any compensation to the appellant. Further, the driver of the lorry belonging to 1st respondent as well as the husband of the appellant were not possessing valid driving licence at the time of accident. Further, the injuries sustained by the appellant are only simple in nature. In any event, the quantum of compensation claimed by the appellant/claimant is highly excessive and hence, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellant examined herself as P.W.1 and one Dr.K.V.Srinivasan was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On the side of the respondents, R.W.1 to R.W.3 were examined and one document was marked as Ex.R1. In addition to that, Exs.X1 and X2 were marked as Court documents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that both the rider of the motor-cycle as well as the driver of the lorry belonging to 1st respondent, are responsible for the accident, and



accordingly, the Tribunal fixed the contributory negligence in the ratio of 50% each. The Tribunal, on appreciation of the material evidence awarded a sum of Rs.1,18,000/- as compensation to the appellant and directed the 2nd respondent/Insurance Company to pay Rs.59,000/-, being 50% of the award amount as compensation to her at the first instance and thereafter to recover it from the owner of the Lorry being the 1st respondent herein.

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation. It is noteworthy to mention that the second respondent/Insurance Company has not filed any appeal questioning the 50% liability imposed on them.

8. The learned counsel appearing for the appellant/claimant contended that in the accident, the appellant sustained grievous injuries all over her body and she was taking treatment at Government Hospital, Salem. P.W.2/Doctor examined before the Tribunal has stated that the appellant suffered 34.91% disability and issued Ex.P10/disability certificate was issued. The Tribunal, considering the fact that no calculation report was filed to prove the disability of the appellant, reduced the percentage of disability from



34.91% to 33% and awarded compensation only for 33% disability at the rate of Rs.3,000/- per percentage. At the time of accident, the appellant was doing bricks manufacturing and selling business and earning a sum of Rs.20,000/- per month, but the Tribunal fixed a meagre sum of Rs.4,500/- per month as notional income of the appellant and awarded compensation towards loss of income. The appellant, being a female, has taken treatment as in-patient at the Government Mohan Kumaramangalam Medical College Hospital, Salem for ten days from 10.06.2014 to 19.06.2014 but the Tribunal failed to award any amount towards extra-nourishment. The amounts awarded by the Tribunal towards disability, pain and sufferings, attendant charges, nutrition and transportation, are meagre and hence, the learned counsel prayed for enhancement of compensation.

9. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal reduced the percentage of disability from 34.91% to 33% on the ground that P.W.2/Doctor has not filed any calculation report to show as to how he arrived at the percentage of disability. Hence, the appellant is not entitled to enhancement of compensation as prayed for in this appeal. The appellant has also did not produce any material evidence to prove her avocation and income. In the



absence of any material evidence to prove the income, a sum of Rs.4,500/- per month was fixed by the Tribunal as notional income of the appellant and that by itself is excessive. In any event, the Tribunal, considering the entire materials on record, has awarded compensation under different heads, which are not meagre but they are just and proper. The learned counsel therefore prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the entire materials available on record.

11. At the outset, it must be mentioned that in the accident, the husband of the appellant died on the spot. The appellant also sustained injuries in the very same accident, while traveling pillion. Therefore, two Original Petitions were filed before the Tribunal namely MCOP Nos. 1913 and 1914 of 2014. This appeal is focussed as against the award passed in MCOP No. 1913 of 2014 relating to the compensation sought for the injuries sustained by the claimant.



WEB COPY 12. It is the case of the appellant that the accident has occurred while the appellant was travelling as pillion rider in the motor-cycle driven by her husband along with one Arumugam, another occupant (triples). While the two wheeler was proceeding from Valasaiyur to Veeranam Main Road the lorry bearing registration No.TN 54 2900 owned by the 1st respondent and insured with the 2nd respondent driven it in a rash and negligent manner and suddenly and abruptly applied sudden brake. The husband of the appellant, who was caught unaware of such enmasse brake applied by the lorry driver, hit the lorry in the rear side. In the impact, the husband of the appellant died on the spot, while the appellant sustained injuries.

13. To prove the nature of injuries sustained by her, the appellant examined herself as P.W.1. She had deposed before the Tribunal about the injuries, the period of her hospitalisation etc., On the other hand, it is the case of the 2nd respondent/Insurance Company that at the time of accident, the driver of the lorry has given sufficient indication and stopped vehicle, however, it was the driver of the two wheeler (apllenat's husband), due to his negligent driving, had hit the lorry from behind.



14. The Tribunal, considering the evidence of P.W.1, held that the accident had occurred due to rash and negligent driving by the driver of the lorry owned by 1st respondent as well as the husband of the appellant. In a case of this nature, especially when the two wheeler driven by the husband of the appellant hit the lorry in the rear side, it can reasonably be presumed that the contribution has to be fixed equally. In fact, at the time of accident, the husband of the appellant was riding the two wheeler with two pillion riders. Therefore also, it can be sufficiently presumed that the husband of the appellant, due to unauthorised riding of the vehicle, could not exercise effective control over the vehicle driven by him. In such event, the contributory negligence fixed by the Tribunal is proper and this Court finds no reason to interfere with the same. Further the Tribunal after considering the fact that the first respondent vehicle was driven without Fitness Certificate in violation of policy condition ordered, the second respondent/Insurance Company to pay the award amount at the first instance and recover the same from the first respondent. This Court does not find any infirmity in the award passed by the Tribunal.

15. The accident took place on 10.06.2014. At the time of accident, the appellant was aged 40 years. It is claimed that she was earning Rs.20,000/- per month by engaging herself in bricklin manufacturing and sale business.



However, no documentary evidence was produced to prove the earnings. It is well settled that even in the absence of any proof of earning, when the appellant is a women and assuming that she is a home-maker, the compensation has to be assessed not in terms of money, but in terms of her physical labour in engaging herself in household chores and the impact it will have in the event of her disability to do so. Having regard to the above, this Court is of the view that atleast a sum of Rs.4,000/- per percentage of disability could be awarded to the appellant. As per the disability certificate issued by PW2, the Tribunal has taken 33% as the disability, which in the opinion of this Court, is wholly justified. Accordingly, for 33% of disability, awarding a sum of Rs.4,000/- per percentage of disability would be proper. Accordingly, the compensation awarded by the Tribunal towards disability is modified to Rs.1,32,000/- (Rs.4,000/- X 33% disability).

16. The Tribunal has awarded Rs.10,000/- towards pain and suffering which is meagre considering the nature of injuries sustained by the appellant, hence, it is enhanced to Rs.15,000/-. Likewise, this Court is inclined to enhance the award under the head “extra-nourishment” from Rs.2,000/- to Rs.5,000/-. Thus, the compensation awarded by the Tribunal is modified as follows:



C.M.A.No.418 of 2018

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	Rs.99,000/-	Rs.1,32,000/-	Enhanced
2.	Pain and sufferings	Rs.10,000/-	Rs.15,000/-	Enhanced
3.	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Attendant charges	Rs.2,000/-	Rs.2,000/-	Confirmed
6.	Extra-nourishment	Rs.2,000/-	Rs.5,000/-	Enhanced
	Total	Rs.1,18,000/-	Rs.1,59,000/-	Enhanced by Rs.41,000/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. The compensation awarded by the Tribunal at Rs.1,18,000/- is hereby enhanced to Rs.1,59,000/- [Rupees One Lakh and Fifty Nine Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit 50% of the award amount now determined by this Court, along with accrued interest and costs, towards their share of compensation, to the credit of M.C.O.P.No.1913 of 2014 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Salem, within a period of six weeks from the date of receipt of a copy of this judgment. After depositing the amount, liberty is given to the second respondent-Insurance Company to recover the compensation amount from the 1st respondent/owner of the lorry.



C.M.A.No.418 of 2018

On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs. Since, this Court had enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, on the enhanced compensation amount. In other respects, the Award of the Tribunal shall stand confirmed. It is made clear that the appellant is not entitled to any interest for the period of delay of 161 days in filing this appeal, as per the order of this Court dated 16.02.2018 made in C.M.P.No.1447 of 2018 in C.M.A.SR.No.99785 of 2017.

07.12.2021
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Index : Yes / No

Speaking Order : Yes / No

To:

1.The III Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

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



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C.M.A.No.418 of 2018

S.KANNAMMAL, J.

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C.M.A.No.418 of 2018

07.12.2021
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