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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 715 of 2017

Manjula.

...Appellant/Petitioner

Vs

1. A.G.Devamani
Proprietor
M/s. Valli Bus Service
No. 188, Periakadu, Pudupalayam
Tiruchengode Taluk, Namakkal District

2. The New India Assurance Company Ltd.,
66, C, North Car Street, Tiruchengode.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment made in M.C.O.P.No.77 of 2012 on the file of the Motor Accident Claims Tribunal, Tiruchengode, dated 26.08.2013.

For Appellant : Mr. C.Kulanthaivel
For Respondent 1 : Exparte
For Respondent 2 : M/s. R.Sreevidhya

JUDGMENT

This appeal has been filed by the appellant/claimant, seeking enhancement of compensation under the impugned award dated 26.08.2013 passed by the Motor Accidents Claims Tribunal, Tiruchengode, in M.C.O.P.No. 77 of 2012.

2. The appellant/claimant has challenged the impugned award on the ground that the Tribunal has erroneously fixed 50% contributory negligence on the part of the appellant/claimant and the quantum of compensation awarded by the Tribunal is also not just and proper. Therefore, the appellant/claimant seeks for enhancement.

3. The Tribunal, under the impugned award, directed the respondents jointly and severally to pay 50% of the compensation of Rs.74,240/- (Rupees Seventy Four Thousand Two Hundred and forty only) equivalent to Rs.37,120/- (Rupees Thirty Seven Thousand One Hundred and Twenty only) to the appellant as detailed hereunder:



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Heads	Amount awarded by the Tribunal (Rs.)
Partial Loss of earnings	8,000/-
Transportation to hospital	2,000/-
Extra nourishment	5,000/-
Damages to clothing & articles	1,000/-
Medical Expenses	25,240/-
Pain and sufferings	3,000/-
Permanent disability & loss of earning power	30,000/-
Total compensation	74,240/-

4. The appellant/claimant was a pillion rider in the motor cycle which was carrying three persons, including the appellant/claimant and the accident happened on 02.06.2012. Admittedly, the motor cycle, in which the appellant/claimant was travelling as a pillion rider, can carry only two persons. Among three persons, one of them was a minor girl viz., the daughter of the rider of the motor cycle. Since, the motor cycle was carrying three persons, the Tribunal has fixed 50% contributory negligence on the part of the appellant/claimant, who was a pillion rider in the motor cycle.

5. This Court is of the considered view that 50% of the contributory negligence fixed by the Tribunal on the part of the appellant/claimant was on the higher side, since she was not a rider of the motorcycle, but only a pillion rider. Further, a minor girl was also travelling in the motor cycle who is none else than the daughter of the rider of the motor cycle.

6. After giving due consideration to the afore mentioned factors, the fixation of 50% as contributory negligence on the part of the appellant/claimant by the Tribunal is not a correct assessment. After giving due consideration to the afore mentioned factors, which has not been disputed by the respondents, this Court, instead of fixing 50% contributory negligence on the part of the appellant/claimant, reduces the contributory negligence of the appellant/claimant to 10%. Accordingly, the contributory negligence on the part of the appellant/claimant is fixed at 10% instead of 50%, erroneously fixed by the Tribunal.

7. The compensation awarded by the Tribunal under various heads excepting disability compensation referred to supra, is a



just compensation and there is no question of enhancement under those heads.

8. For the foregoing reasons, this appeal is partly allowed by fixing the contributory negligence on the part of the appellant/claimant at 10% instead of 50%, erroneously fixed by the Tribunal.

9. The disability compensation awarded by the Tribunal is Rs.30,000/- (Rupees Thirty Thousand only). The Doctor has assessed the disability of the appellant/claimant at 33%, which has been accepted by the Tribunal. But, however, the Tribunal without giving proper reasons, has reduced the disability to 15% under the impugned award. Unless and until proper reasons have been given, the Tribunal ought not to have reduced the disability from 33% to 15%. Therefore, this Court has to necessarily accept the findings of the Doctor who has assessed the disability of the appellant/claimant at 33%. Hence, the disability of the appellant/claimant is assessed by this Court at 33%, as fixed by the Doctor.

10. The accident happened in the year 2012. The Tribunal has awarded a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards disability. After giving due consideration to the year of the accident, this Court is of the considered view that the compensation awarded towards the disability of the appellant/claimant is low and it has to be enhanced to Rs.99,000/- (Rupees Ninety Nine Thousand only), calculated at Rs.3000/- (Rupees Three Thousand only) per percentage of 33% disability suffered by the appellant/claimant.

11. For the foregoing reasons, the compensation assessed by the Tribunal under the impugned award is enhanced to Rs.1,43,240/- (Rupees One Lakh Forty Three Thousand Two Hundred and Forty only). Since, 10% contributory negligence has been fixed by this Court on the part of the appellant/claimant, the appellant/claimant is entitled to a compensation of Rs.1,28,916/- (Rupees One Lakh Twenty Eight Thousand Nine Hundred and Sixteen only) as detailed hereunder:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Partial Loss of earnings	8,000/-	8,000/-	Confirmed
Transportation to hospital	2,000/-	2,000/-	Confirmed



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Extra nourishment	5,000/-	5,000/-	Confirmed
Damages to clothing & articles	1,000/-	1,000/-	Confirmed
Medical Expenses	25,240/-	25,240/-	Confirmed
Pain and sufferings	3,000/-	3,000/-	Confirmed
Permanent disability & loss of earning power	30,000/-	99,000/-	Enhanced
Total compensation	74,240/-	1,43,240/-	Enhanced

12. Accordingly, the civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.74,240/-to Rs.1,43,240/- (Rupees One Lakh Forty Three Thousand Two Hundred and Forty only). Since, 10% contributory negligence has been fixed by this Court on the part of the appellant/claimant, the appellant/claimant is entitled to a compensation of Rs.1,28,916/- (Rupees One Lakh Twenty Eight Thousand Nine Hundred and Sixteen only) i.e., Rs.1,43,240 - 14,324 = 1,28,916/-.

13. The respondents are directed to deposit the compensation amount of Rs.1,28,916/- (Rupees One Lakh Twenty Eight Thousand Nine Hundred and Sixteen only), awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP. No. 77 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP. No. 77 of 2012 to the bank account of the claimant through RTGS within a period of one week thereafter.No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1. Motor Accident Claims Tribunal,
Tiruchengode.

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Copy to

The Section Officer,
V.R.Section, High Court, Madras - 104.

+1 Cc to Mr.C. Kulanthaivel, Advocate sr 50799

+1 CC to Mrs.R. Sreevidya, Advocate sr 51693.

C.M.A. No. 715 of 2017

PM(CO)
SP(18/11/2021)