



CMA.3566 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2022

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**CMA.3566 of 2012**

Annapoorani

.. Appellant/petitioner

Vs.

1.R.Rahima bevi

2.R.Rajendran

3.Cholamandalam

M/s.General Insurance Company Limited,

Tar House, 2<sup>nd</sup> floor, NSC Bose Road,

Chennai

..Respondents/Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree passed in MACT.O.P.No.2391 of 2009, on the file of Motor Vehicle Accident Tribunal, Cuddalore, [Chief Judicial Magistrate] dated 25.07.2012.



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For Appellant : Mr.M.Sachin Vijay  
for Mr.V.Raghavachari.

For Respondents : Mr.M.V.Raghavan for R3.

### **JUDGMENT**

The appellant/claimant has filed this appeal seeking enhancement of the compensation. The Tribunal awarded Rs.63,000/- as compensation to the claimant/injured. According to the appellant, the said compensation is not a fair and reasonable sum for the expenses incurred by her towards treatment.

2. The grounds raised are only with regard to the compensation amount and not on liability or negligence aspect. It is submitted that the tribunal failed to take into consideration the evidence of the doctor who had very clearly stated that the appellant/petitioner had suffered a permanent disability.

3. On 18.04.2009 when the appellant/claimant was travelling as pillion rider with her husband as rider in a Hero Honda Motor Cycle, an Ambassador car bearing Reg.No.TN-31-K7189 which was coming behind but driven in rash and



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negligence manner, hit the claimant, thereby, she sustained grievous injuries and fracture in right hand. The offending vehicle belongs to 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent is the driver and insured with the 3<sup>rd</sup> respondent. The injured filed claim petition claiming Rs.5,00,000/- as compensation.

4. After full fledged trial, the Tribunal held that even though 3<sup>rd</sup> respondent-insurance company sent notice to the 1<sup>st</sup> respondent owner of the vehicle and 2<sup>nd</sup> respondent driver of the vehicle asking to produce driving license, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not produced the driving licence to the Motor Vehicle Inspector. Further, before the criminal court, in respect of the accident, charge sheet has been filed framing the charge that at the time of accident, the 2<sup>nd</sup> respondent driver was rash and negligent and the driver was not holding driving licence. As such, the Tribunal held that 3<sup>rd</sup> respondent-insurance company is not liable to pay compensation to the claimant.

5. In respect of the quantum of compensation, the tribunal's view is that the claimant produced Ex.P.8 Salary certificate pertaining to 2011, however, claimant



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has not produced any document to show that due to the accident, there occurred loss of earning. In such circumstances, disability is taken as 20% and per percentage of disability Rs.1500/- , Rs.30,000/- has been awarded as disability compensation. Further, towards pain and suffering, Rs.10,000/-; towards medical bills Rs.13,000/- [Ex.P.7] and towards extra nourishment and transportation, Rs.10,000/- , so altogether, Rs.63,000/- has been awarded as compensation.

6. The above findings of the tribunal and grant of compensation to the claimant/appellant is well considered and this court do not find any ground to interfere with the same. However, the 3<sup>rd</sup> respondent - insurance company has not disputed the insurance coverage of the vehicle involved in the accident. Therefore, the finding with regard to payment of compensation by the 1<sup>st</sup> respondent owner is confirmed, subject to the principle of Pay and Recovery. As per the settled law laid down by various decisions of the Hon'ble Supreme Court as well as the High Courts including the Judgment rendered by the Hon'ble Supreme Court in the case of [National Insurance Company vs. Swaran Singh & Others](#) reported in *2004 (3) SCC 297*, the insurance company will have to



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necessarily pay the claimant and recover the same from the owner of the Ambassador car bearing Reg.No.TN-31K-7189 i.e., the first respondent, who is the insured.

7. In the result, the Civil Miscellaneous Appeal is dismissed with the above observation. The compensation granted by the tribunal is confirmed. The 3<sup>rd</sup> respondent insurance company shall pay the award at first instance with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and recover the same from the 1<sup>st</sup> respondent later. On such deposit, the appellant/claimant is entitled to withdraw the same. No costs.

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Intex : Yes/No  
Internet : Yes/No  
nvsri



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**J.NISHA BANU,J.**

nvsri

To

1.The Motor Accident Claims Tribunal  
(Chief Judicial Magistrate) At Cuddalore.

2.The Section Officer, V.R.Section,  
Madras High Court,  
Chennai.

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