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C.M.A.No.416 of 2021 and
Cross Obj.No.92 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.416 of 2021

and

C.M.P.No.2668 of 2021

and

Cross Objection No.92 of 2022

C.M.A.No.416 of 2021:

M/s. United India Insurance Co. Ltd.,
At No.77, Oriental Complex,
A.A.Street,
Salem – 636 001.

.. Appellant

Vs.

1.Sharmila

2.Subramani

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.10.2019, made in M.C.O.P.No.111 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.



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For Appellant : Mr.S.Arunkumar
For R1 : Mr.Ma.P.Thangavel
For R2 : No appearance

Cross Objection No.92 of 2022:

Sharmila

.. Cross Objector

Vs.

1.M/s. United India Insurance Company Ltd.,
At No.77, Oriental Complex, AA Street,
Salem – 636 001.

2.Subramani

.. Respondents

(R2 remained exparte before Tribunal.
Hence, notice to R2 dispensed with)

Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C.,
to enhance the award amount in the judgment and decree dated
15.10.2019, made in M.C.O.P.No.111 of 2015, on the file of the Motor
Accident Claims Tribunal, Special Sub Court No.I, Salem.

For Cross Objector : Mr.Ma.P.Thangavel
For R1 : Mr.S.Arunkumar



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COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

C.M.A.No.416 of 2021 has been filed by the Insurance Company against the award dated 15.10.2019, made in M.C.O.P.No.111 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

2.Cross Objection No.92 of 2022 has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the award dated 15.10.2019, made in M.C.O.P.No.111 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem.

3.The 1st respondent / claimant filed M.C.O.P.No.111 of 2015, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by her in the accident that took place on 14.10.2014.

4.According to 1st respondent, on 14.10.2014 at about 02.00 P.M., while she was travelling as pillion in the motorcycle bearing Registration No.TN 54 A 0624 driven by the 2nd respondent from East to West



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direction on the left side of the Salem – Attur Main Road, near Sheshanchavadi Veterinary Hospital, the 2nd respondent drove the motorcycle in a rash and negligent manner and dashed the motorcycle on the stone, which was on the left side of the road and caused the accident. Due to the said impact, the 1st respondent fell down from the motorcycle, sustained injuries and fracture on the backside of the her head, fracture on the spinal cord and multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to Pazhaniyandi Mudaliar Hospital, Ammapettai, Salem for first aid treatment and thereafter she was shifted to Neuro Foundation Hospital, Salem, where she has taken treatment as inpatient and underwent surgeries. Hence, the 1st respondent filed the said claim petition claiming compensation against the 2nd respondent and appellant, who are the owner and insurer of the motorcycle respectively.

5.The 2nd respondent – rider-cum-owner of the motorcycle remained exparte before the Tribunal.

6.The appellant – Insurance Company filed counter statement and denied all the averments made by the 1st respondent. The appellant



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denied the manner of accident as alleged by the 1st respondent. According to appellant, when the rider of the Hero Honda Splendor motorcycle bearing Registration No.TN 54 A 0624 was riding the same slowly on the Salem – Attur Main Road near Sheshanchavadi Veterinary Hospital, the 1st respondent, who was travelling as a pillion, fell down from the motorcycle, when the motorcycle was proceeding on a speed breaker in the road, invited the accident and sustained injuries. The 1st respondent also contributed negligence to the accident. The 1st respondent has to prove her nature of injuries, period of treatment taken, medical expenses incurred by her and disability by producing valid documentary evidence. The appellant denied the age, avocation and income of the 1st respondent. The quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.The appellant-Insurance Company filed additional counter statement and submitted that at the time of accident, the 1st respondent did not travel as pillion rider in the motorcycle bearing Registration No.TN 54 A 0624 belonging to 2nd respondent. As per the AR copy and accident intimation slip issued by the Neuro Foundation Hospital, Salem, it was mentioned as “ALLEGED H/O RTA WHILE DRIVING A TWO



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WHEELER SKID OVER AND FELL DOWN FROM THE BIKE NEAR
SHESHANCHAVADI AROUND 2.00 P.M ON 14.10.2014". The

Valapadi Police have registered FIR based on the written complaint given by the husband of the 1st respondent after 26 days of the accident, stating that his wife travelled as pillion rider in the motorcycle bearing Registration No.TN 54 A 0624, which was driven by his father-in-law and caused the accident. Based on the written complaint, the Valapady Police have registered FIR and the criminal case was closed by the Judicial Magistrate Court as barred by limitation, since the charge sheet was not filed in time. The 1st respondent was not possessing valid driving license to drive the motorcycle and the accident has occurred due to her own negligence. To meet out the medical expenses, the respondents 1 & 2 introduced a new case as if the 1st respondent travelled as pillion rider in the motorcycle driven by the 2nd respondent. Hence, the claim petition is not maintainable and prayed for dismissal of the claim petition.

8.Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 15 documents as Exs.P1 to P15. The appellant examined three witnesses as R.W.1 to R.W.3 and marked copy of the insurance policy of the motorcycle bearing Registration No.TN 54 A 0624 as



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Ex.R1. The disability certificate issued by the Salem Medical Board was marked as Ex.C1 and Exs.W1 to W3 were marked as witness documents.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent / rider of the motorcycle and directed the appellant-Insurance Company, being the insurer of the motorcycle to pay a sum of Rs.32,93,909/- as compensation to the 1st respondent.

10.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 15.10.2019, made in M.C.O.P.No.111 of 2015, the appellant-Insurance Company has come out with present appeal in C.M.A.No.416 of 2021.

11.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent / claimant has filed Cross Objection No.92 of 2022, seeking enhancement of compensation.

12.The learned counsel appearing for the appellant-Insurance Company contended that while the 1st respondent was riding the two



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wheeler, skidded and fell down and got injured. This was recorded in the

Accident Register when the 1st respondent was admitted in the Hospital.

The Accident Register was recorded based on the information given by the 2nd respondent, the father of the 1st respondent. The Tribunal without properly appreciating the evidence of R.W.1 to R.W.3 and Exs.R1 to R3, erroneously held that accident occurred while the 1st respondent was riding as pillion in the motorcycle driven by her father, the 2nd respondent herein. The Tribunal without considering the delay in lodging the complaint, erroneously relied on the belated FIR and evidence of interested witness, the 1st respondent, held that the accident occurred due to the negligence of the 2nd respondent. The Tribunal failed to see that the 1st respondent is the daughter of the 2nd respondent and wife of the complainant. The 1st respondent failed to prove her avocation and income. In the absence of any materials, the notional income fixed by the Tribunal at Rs.9,000/- per month is excessive. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and for dismissal of Cross Objection No.92 of 2022 filed by the 1st respondent for enhancement of compensation.



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13.Per contra, the learned counsel appearing for the 1st respondent / cross objector contended that the 1st respondent proved the manner of accident and Tribunal properly appreciating the evidence on record, held that the accident occurred due to entire negligence of the 2nd respondent. The 1st respondent was aged 23 years, possessed B.Sc., B.Ed qualification, working as Teacher in a Private School and was earning a sum of Rs.25,000/- per month at the time of accident. The accident is of the year 2014 and the Tribunal erroneously fixed a meagre amount of Rs.9,000/- as monthly income of the 1st respondent without considering the year of accident, cost of living and other factors. The compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.416 of 2021 filed by the appellant – Insurance Company.

14.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

15.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent



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and perused the entire materials on record.

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16.From the materials on record, it is seen that it is the case of the 1st respondent that while she was riding as pillion in the motorcycle driven by her father, the 2nd respondent herein, the 2nd respondent dashed on the stone in the left side of the road and due to said impact, she sustained injuries. To substantiate her contention, she examined herself as P.W.1 and deposed as that of the averments in the claim petition. She also marked FIR as Ex.P1, which was registered against her father, the 2nd respondent herein, the rider of the motorcycle. On the other hand, it is the case of the appellant that at the time of accident, the 1st respondent was riding the motorcycle and accident did not occur as alleged by the 1st respondent. She herself was riding the motorcycle and due to her own negligence, the accident occurred. In view of the same, the appellant is not liable to pay any compensation to the 1st respondent. To substantiate their contention, the appellant relied on Accident Register, which was recorded by R.W.1., who is Administrative Officer of Neuro Foundation Hospital. R.W.1 in his cross examination admitted that he did not know who gave information at the time of admission of 1st respondent and based on whose statement, Accident Register was recorded. The



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appellant has not examined any eyewitness to prove that the 1st respondent while riding the motorcycle, fell down and the accident has occurred. The contention of the learned counsel appearing for the appellant that the Tribunal erroneously relied on the belated FIR to fix the negligence on the 2nd respondent and liability on the appellant is not acceptable. When the 1st respondent was admitted in the Hospital, Hospital Authorities ought to have informed the Police about the accident. It is well settled that belated FIR is not fatal to the claim for compensation. The Tribunal considering the materials placed before it, accepted the evidence of 1st respondent and fixed negligence on the 2nd respondent and liability on the appellant and there is no error in the said finding of the Tribunal warranting interference by this Court.

17.As far as quantum of compensation is concerned, it is the case of the 1st respondent that at the time of accident, she was aged 23 years, working as Teacher in a Private School, earning a sum of Rs.25,000/- per month. To prove the said contention, the 1st respondent has not produced any document. In the claim petition, the 1st respondent has not even mentioned in which School she is working and also not produced any salary certificate to prove that she was earning a sum of Rs.25,000/- per



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month at the time of accident. In the absence of any documents, the Tribunal taking into consideration the age of the 1st respondent and date of accident, fixed the notional income of the 1st respondent at Rs.9,000/- per month and granted 40% enhancement towards future prospects. The Tribunal accepted the disability certificate issued by the Salem Medical Board and taking into consideration the nature of injuries and disability, granted compensation to the 1st respondent by adopting multiplier method. The total compensation granted by the Tribunal is just compensation and there is no reason to interfere with the compensation granted by the Tribunal.

18.In the result, both C.M.A.No.416 of 2021 and Cross Objection No.92 of 2022 are dismissed and the compensation awarded by the Tribunal at Rs.32,93,909/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.111 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem. On



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such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)

28.10.2022

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Index : Yes / No
Internet : Yes / No

To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Salem.

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



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and

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