



C.M.A.(MD)No.243 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 27.10.2022

Delivered On : 08.11.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.243 of 2018

The United India Insurance Co. Ltd.,
Marthandam Branch,
Rep. by its Branch Manager,
having office at P.P.K.Building,
Main Road, Marthandam,
Vilavancode Taluk,
Kanyakumari District.

.. Appellant /3rd Respondent

Vs.

1.S.Sumathi

... 1st Respondent / Petitioner

2.R.Selvakumar

... 2nd Respondent / 1st Respondent

3.L.Radhakrishnan

... 3rd Respondent / 2nd Respondent

(R2 & R3 given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, passed in M.C.O.P.No.63 of 2015, dated 18.08.2017, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Kanyakumari at Nagercoil.

For Appellant

: Mr.C.Jawahar Ravindran

For Respondents

: Mr.D.Saravanan for R1

: R2 & R3 -given up



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, passed in M.C.O.P.No.63 of 2015, dated 18.08.2017, on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Kanyakumari at Nagercoil. The appellant herein is the third respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent and the third respondent herein is the second respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.63 of 2015, is as follows:

On 11.07.2014, at about 5.30 pm., when the petitioner was riding a two wheeler-Scooty pep, bearing Registration No.TN-74-W-8541 near Athithya School, keeping the extreme left side of the road, the first respondent came from the opposite direction, in another two wheeler bearing Registration No.TN-75-M-4054 in a rash and negligent manner, dashed against the Scooty pep vehicle, driven by the petitioner. The petitioner sustained grievous injuries. She was taken to PPM Hospital, Rajakkamangalam, after getting first aid, she was admitted in Muthu Neuro care centre, Chunkankadai, Nagercoil. She took treatment as inpatient from 11.07.2014 till 01.08.2014 and then, she took treatment as out patient. The petitioner



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was 38 years at the time of accident, she was earning Rs.9,530/- per month as an Assistant at Kamaraj Polytechnic college, Pazhavilai. After the accident, her salary was reduced to Rs.8,933/- and her promotion chances are considerably affected and she claimed a sum of Rs.12,00,000/- as compensation.

3. A brief substance of the counter filed by the third respondent, in M.C.O.P.No.63 of 2015, is as follows:-

The manner of accident is to be proved by the petitioner. The age, occupation, income and nature of injuries are all denied. The first respondent rider was not responsible for the accident. The accident has happened only due to the rash and negligent driving of the petitioner. The petitioner has suppressed the details regarding the accident. The first respondent drove the motor cycle in a slow and cautious manner. It was the petitioner, who rode the motor cycle in a rash and negligent manner and dashed against the vehicle of the first respondent. The period of treatment is wrongly stated. The amount claimed is excessive. The petitioner did not incur any loss. There was head on collision of two motor cycles, a wrong doer cannot be compensated for her own fault. The petitioner has not lost her income or job. The owner and insurer of the Scooty pep bearing Registration No. TN-74-W-8541 are necessary parties.



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4. 1 witness was examined and 15 documents were marked on the side of the petitioner. 1 witness was examined and no document was marked on the side of the respondents. After considering both sides, after deducting 15% towards contributory negligence for non-wearing of helmet, the Tribunal has awarded a sum of Rs.9,33,470/- as compensation,.

5. Against the award, the third respondent / appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in adopting multiplier method, even as per the case of the claimant there was no functional disability. The claimant herself has admitted that she continues her previous avocation as Cashier. The award of Rs.6,73,200/- as compensation for 40% disability is excessive. The Tribunal has awarded Rs.1,00,000/- towards pain and sufferings and Rs.20,000/- for loss of portion of life period, which are not maintainable.

6. On the side of the appellant, it is stated that there was no head injury, but, the Tribunal has adopted multiplier method for 40% disability, which is excessive.



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7. On the side of the respondent, it is stated that the claimant sustained grievous injuries and the claimant is entitled to loss of income by adopting multiplier method. The claimant sustained head injury and she took treatment for a period of 40 days and she undergone surgery and adopting multiplier method is reasonable.

8. It is seen that the claimant was earning Rs.9,530/- per month and the salary certificate was marked as Ex.P12, subsequent to the accident, her salary was reduced to Rs.8,933/- which is evident from EX.P13-salary certificate. The salary of the claimant is reduced to Rs.597/-, but, the Tribunal fixed the loss of income as Rs.3740/- per month which is quite unreasonable. The reason for reduction in the salary was not particularly mentioned in the petition or in the salary certificate. It is seen that the claimant was continuing a job in the same institution, whether the salary was subsequently increased was not brought to the knowledge of the Tribunal. In the above circumstances, it is decided that applying multiplier method is not necessary.

9. For 40% disability, the claimant is entitled to Rs.1,20,000/- (Rs.3,000/- X 40 =Rs.1,20,000/-). The Tribunal awarded Rs.1,00,000/- towards pain and sufferings, Rs.25,000/- towards loss of amenities, Rs.10,000/- towards transport charges, Rs.10,000/- towards extra nourishment, Rs.30,000/- towards temporary loss



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of income for the period of treatment and Rs.2,30,000/- towards medical expenses, which are all reasonable. The claimant is entitled to Rs.31,000/- towards loss of expectation of life.

10. The total compensation is calculated as follows:-

For 40% disability	:	Rs. 1,20,000/-
pain and sufferings	:	Rs. 1,00,000/-
loss of amenities	:	Rs. 25,000/-
transport charges	:	Rs. 10,000/-
extra nourishment	:	Rs. 10,000/-
temporary loss of income	:	Rs. 30,000/-
medical expenses	:	Rs. 2,30,000/-
loss of expectation of life	:	Rs. 31,000/-
Total compensation	:	 Rs. 5,56,000/-

The Tribunal has fixed the contributory negligence as 15% for non-wearing of helmet by the claimant. It is decided that the claimant is liable for 10% for contributory negligence. After deducting 10% towards contributory negligence, the claimant is entitled to Rs.5,04,000/- (Rs.5,60,000/- (-) Rs.56,000/- (10%) = Rs.5,04,000/-) as compensation.



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11. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.9,33,470/- to **Rs. 5,04,000/-**.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs. 5,04,000/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her. The claimant is not entitled for interest for the default period, if there is any.

08.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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R. THARANI, J.

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To

- 1.The Motor Accident Claims Tribunal cum
Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.243 of 2018

08.11.2022