



C.M.A.Nos.234 and 2920 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal Nos.234 and 2920 of 2021
and
Civil Miscellaneous Petition No.16715 of 2021

C.M.A.No.234 of 2021:

Kalamani

... Appellant / Petitioner

Vs.

1. Palanisamy

2. United India Insurance Company Limited,
Rep. by its Branch Manager,
Office at 53/4, Old Bus Stand Road,
TVR Corner Building,
Perundurai, Erode District

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2020 made in M.C.O.P.No.26 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai.

For Appellant	:	Mr. S. Kaithamalai Kumaran
For R1	:	Not found
For R2	:	Mr. J. Chandran



C.M.A.Nos.234 and 2920 of 2021

WEB COPY

C.M.A.No.2920 of 2021:

The Branch Manager,
United India Insurance Company Limited,
Office No. 53/4, Old Bus Stand Road,
T.V.R. Corner Building,
Perundurai, Erode District. ... Appellant / 2nd respondent

Vs.

1. Kalamani ... Respondent / Petitioner
2. Palanisamy ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2020 made in M.C.O.P.No.26 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai.

For Appellant : Mr. J. Chandran
For R1 : Mr. S. Kaithamalai Kumaran
For R2 : Ex-parte

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been arising out of the Award passed in M.C.O.P.No.26 of 2016, dated 10.02.2020, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Perundurai.



WEB COURT

2. The parties are referred to hereunder according to their

litigative status and ranking before the Tribunal.

3. The claimant has filed C.M.A.No.234 of 2021 aggrieved over the negligence fixed on the husband of the claimant for the accident taken place. The Insurance Company has filed C.M.A.No.2920 of 2021, challenging the negligence and quantum of compensation awarded against the driver of the first respondent vehicle and also the quantum of compensation awarded.

4. The case of the claimant is that on 20.12.2015 at about 16.45 hours, she was travelling with her husband as a pillion rider in a Moped (two-wheeler) bearing Registration No.TN 33 U 4251 on the Covai to Salem National Highways (NH 47) on the East to West direction, at that time, the petitioner's husband i.e., the rider of the Moped (two-wheeler) stopped the two-wheeler on the extreme left side of the Pallagoundenpalayam for waiting to cross the road. At that time, a motorcycle bearing Registration No.TN 33 AW 1092 driven by the first respondent came behind them in rash and negligent speed and hit on the Moped (two-wheeler) of the claimant,



which resulted in causing severe injuries to the claimant and her husband.

She has come forward with this Claim Petition seeking compensation for a sum of Rs.15,00,000/-.

5. The first respondent has not contested the claim and was remained ex-parte. The second respondent who is the insurer of the first respondent vehicle has contested the claim on the ground that the claimant's husband has negligently stopped the Moped (two-wheeler) in the middle of the road, which resulted in causing the accident and the compensation claimed by her is also on the higher side. Hence prays to dismiss the claim.

6. Based on the evidences placed on record, the Tribunal in Point No.1 has held that both the riders of the two-wheeler i.e., the husband of the claimant herein as well as the first respondent have negligently driven the vehicles and caused the accident which resulted in causing severe injuries to her. Hence, the negligence was apportioned between them as 30% : 70%. Further the Tribunal has quantified the compensation and awarded a sum of Rs.7,70,250/- as compensation along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.



WEB COPY

7. Aggrieved over the above finding that the quantum of compensation, the claimant as well as the Insurance Company has come forward with these appeals.

8. Mr. S. Kaithamalai Kumaran, learned counsel for the claimant has submitted that there is no evidence placed on record to show that the husband of the claimant has also driven the Moped (two-wheeler) negligently, which resulted in accident. There is ample evidence placed on record to show that only the first respondent rode the two-wheeler and hit on the Moped (two-wheeler) which the claimant has travelled hence prays to set aside the above finding, and to fix the negligence on the part of the first respondent to the extent of 100%. He has also relied on the evidence of eye witness, Inspection Report of the Motor Vehicle Inspectors and the First Information Report to support his contention.

9. Per Contra, Mr. J. Chandran, learned counsel for the Insurance Company has submitted that they have examined the police officials, who have conducted investigation in this matter and they have



WEB.COM

categorically deposed before the Tribunal that there is no involvement of two-wheeler of the first respondent in the accident. The claimant's husband has driven the Moped (two-wheeler) in the National Highways in high speed and to avoid the accident in the car, he suddenly applied brake and lost balance and fell down which resulted in causing severe injuries to the claimant. Even though, it is accepted that the first respondent's vehicle has also involved in the accident. Rough Sketch shows that while the claimant's husband attempting to cross the road, the accident had taken place. After appreciating all the evidences and circumstances, the Trial Court has held that both the riders of the two-wheeler are responsible for the accident and accordingly, apportioned the extent of liability and the same may be confirmed.

10. I have considered the rival submissions made on both sides and also perused the records.

11. To prove the negligent act on the part of the first respondent, the claimant examined P.W.1 and P.W.3 who are the eyewitness to the occurrence. P.W.1 has stated that they were waiting to cross the



WEB COPY

National Highways road near Pallagoundenpalayam Samiyarpalayam

Highway bridge, near the divider, at that time, the first respondent has negligently rode the two-wheeler and directly hit on the Moped of the claimant. She has also stated that the wife of the first respondent has also sustained grievous injuries. In the cross examination, it is elicited that, the claimant was travelling in the two-wheeler on the East to West direction and to cross the road, turn the vehicle on the Northern side since, there is a divider to cross the road. This evidence is totally contrary to the pleadings made in the claim petition.

12. In the claim petition, it is the case that for the purpose of crossing the road, she was waiting on the extreme left hand side of the road, whereas, the accident which has been taken place in the middle of the road near the divider. It shows that they were not waiting to enter into the opposite direction to cross the road. The Rough Sketch also shows that the accident had taken place in the middle of the road that too, in the divider area, which is used for crossing the road. The other witnesses have also deposed that while the Moped (two-wheeler) was waiting near the divider to cross the road the other two wheeler came and hit on the claimants vehicle.



The police have also conducted investigation in this case based on the FIR filed after the delay of 5 days, filed the Final Report stating that the allegation of involvement of the first respondent's vehicle is false and there is no such accident as projected by the claimant. However, in this case, the Insurance Company has not examined any witness who are the eyewitness having direct knowledge about the occurrence.

13. The Tribunal based on the evidence placed on record, more particularly, evidence of P.W.1 and the pleadings made on the side of the claimant has held that while the claimant's husband crossing the road has suddenly stopped in the middle of the road, which resulted in causing the accident.

14. On perusal of the evidence of P.W.1, it shows that originally they were going on the left hand side of the road i.e., on the East to West direction and subsequently, in order to cross the road they taken sudden cross in the road. Before crossing the opposite road they stopped near the divider wherein, the accident had taken place.



15. On perusal of the Motor Vehicle Inspection Report, it shows

that the vehicle of the first respondent is not hit on the back side of the claimants vehicle, while it was parked in the middle of the road whereas, it only reveals that the right side bumper and right side mirror of the two-wheeler of the claimant has been damaged. Since the Moped (two-wheeler) hit on the two-wheeler of the first respondent, colluded with the other vehicle. This damages shows that the two-wheeler of the first respondent has not hit on the back side of the claimant's vehicle.

16. Per Contra, while the claimant's vehicle were crossing the two-wheeler of the respondent and hit on the front side of the vehicle. This supports the case of the Insurance Company that the claimant's husband has negligently crossed the road that too, from the left hand side to right hand side of the road. The Motor Vehicle Inspection Report and the evidence of P.W.1 only shows that the two-wheeler rider of the first respondent alone is not responsible for the accident and the husband of the claimant has also negligently crossed the road, which resulted in the accident. Hence, this Court is of the view that the finding of the Tribunal is proper and has no infirmity in the said finding. The claimant is entitled to get only 70% of the



WEB COPY

compensation from the respondents and remaining shall be recovered from her husband. The claimant has not impleaded her husband and insurer of her vehicle. Hence, she is not entitled to get the remaining 30% of the compensation from the respondents herein.

17. Ex.P1 - Discharge Summary shows that the claimant has sustained brain injury and also severe fractures all over the body. The Tribunal taking note of the above injuries has held that the injuries sustained by her is a functional disability. This injury has substantially reduced her physical capacity to do her regular manual work and accordingly, the injuries sustained by the claimant is treated to be as functional disability and adopted multiplier method and awarded compensation and at the same time, the Tribunal has also awarded compensation under the separate head disability. This Court is of the view that since the disability sustained by the claimant has been treated as functional disability, and compensation has been awarded under the head loss of earning capacity, granting compensation under the head disability is unwarranted and accordingly, the compensation awarded under the head disability is hereby rejected. As far as



the compensation awarded by the Tribunal under various other heads are concerned, the compensation awarded is within the permissible limit and the same is hereby confirmed. Accordingly the appeal filed by the claimant is liable to be dismissed. The appeal filed by the Insurance Company is partly allowed.

18. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Enhanced/ Reduced / Granted / Confirmed
1.	Permanent Disability	Rs.1,20,000/-	---	Rejected
2.	Loss of earning capacity	Rs.5,24,160/-	Rs.5,24,160/-	Confirmed
3.	Transport Expenses	Rs.7,500/-	Rs.7,500/-	Confirmed
4.	Pain and Sufferings	Rs.20,000/-	Rs.20,000/-	Confirmed
5.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.4,18,705/-	Rs.4,18,705/-	Confirmed
	Total	Rs.11,00,365/-	Rs.9,80,365/-	Reduced by Rs.1,20,000/-

19. In the result,

(1) C.M.A.No.234 of 2021 is dismissed.

(2) C.M.A.No.2920 of 2021 is allowed. The compensation awarded by the Tribunal is at Rs.11,00,365/- is hereby reduced to



C.M.A.Nos.234 and 2920 of 2021

Rs.9,80,365/- [Rupees Nine Lakhs Eighty Thousand Three Hundred and

WEB COPY

Sixty Five only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The appellant – Insurance Company is directed to deposit 70% of the award amount now determined by this Court i.e., Rs.6,86,365/- along with interest and costs less the amount if any already deposited 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.26 of 2016, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Perundurai. On such deposit the claimant is permitted to withdraw the compensation amount awarded by the Tribunal along with interest and costs less the amount already withdrawn, if any. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.11.2023

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Subordinate Judge,



WEB COPY

Motor Accidents Claims Tribunal,
Perundurai.

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



C.M.A.Nos.234 and 2920 of 2021

K.RAJASEKAR,J.

ssi



WEB COPY



C.M.A.Nos.234 and 2920 of 2021

C.M.A.Nos.234 and 2920 of 2021

29.11.2023