



C.M.A.No.289 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 07.02.2023	Pronounced on 16.02.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.289 of 2023

Myvizhi

... Appellant

Vs.

1.Bharaniraj
2.Sathish Babu
3.Reliance General Insurance Co., Ltd.,
Sakthi Super Market,
3rd Floor, 408, Perundurai Road,
Erode Taluk – 638 011.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Award and Decree made in M.C.O.P.No.214 of 2018, dated 23.12.2020 on the file of the Motor Accident Claims Tribunal/IV-Additional District and Sessions Court, Bhavani, Erode.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.P.Suresh Srinivasan (for R3)



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J U D G M E N T

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The Civil Miscellaneous Appeal has been filed to set aside the Award and Decree made in M.C.O.P.No.214 of 2018, dated 23.12.2020 on the file of the Motor Accident Claims Tribunal/IV-Additional District and Sessions Court, Bhavani, Erode.

2. The claimant is the appellant herein, seeking enhancement of compensation of the award.

3. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

4. The factum of the accident, manner of the accident, rash and negligent on the part of the driver of the offending vehicle are not challenged. The award was challenged only to the limited extent that quantum is less and deduction of 15% towards contributory negligence on the part of the petitioner is unwarranted. The claim petitioner claimed the compensation for the injuries sustained by her in the road transport accident occurred on 24.02.2017.



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5. She examined herself as PW1, marked Exs.P1 to 22 and on behalf of the respondents only a copy of the policy was marked as Ex.R1 and Medical Board Report was marked as Ex.C1.

6. In other words, the oral and documentary evidence filed on behalf of the claim petitioner regarding the manner of the accident was not controverted by any independent witness. It is a specific evidence of PW1 (petitioner herein) that she was riding her TVS Scooty having Registration No. TN-33-Q-9904 from Bhavani Gounder Nagar to Singapore Beauty Parlour which is located near Dr.Loganathan's Hospital at Bhavani. At that time, when the petitioner was crossing Bhavani to Mettur main road towards West to East, another TVS Scooty Zest having Registration No.TN-36-AT-5136 belongs to the second respondent, driven by the first respondent, insured with the third respondent, came from South to North direction and dashed against the petitioner's vehicle and she sustained multiple injuries and she was initially taken treatment at M.A.N.Loganathan Hospital, Bhavani, and subsequently, she was shifted to Ganga Hospital, Coimbatore. She was aged about 31 years at the time of accident and she is a Beautician by profession.



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7. On going through the evidence of PW1, I find that there is no indication that she was not wearing helmet as observed by the Tribunal. As per Ex.P1, P2, P3, P4 and P6, there was no indication that the petitioner was not having helmet at the time of accident. Hence, the Tribunal is committed an error in fixing 15% contributory negligence, upon the claim petitioner.

8. In view of the discussions stated supra, the said finding of the Tribunal is hereby stands vacated as the same is legally unsustainable. Accordingly, this Court comes to a conclusion that the accident has taken place due to the rash and negligent driving of the first respondent, who drove the second respondent's vehicle which has been insured with the third respondent/insurance Company and hence, all the respondents are jointly or severally liable to pay the compensation. Based on the materials available on record, the Tribunal ordered 'pay and recover' and accordingly ordered the 3rd Respondent to pay the compensation and get it reimbursed from the 1st and 2nd Respondents. The same is hereby confirmed.

9. On the point of quantum of compensation both the parties have been



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heard. Initially, she has taken treatment for 6 days and subsequently she has taken treatment for another 3 days as in-patient. After perusing Ex.P16/Discharge summary, I find that due to the nature of the injuries, the claim Petitioner would have suffered for a period of 4 months and she should have taken rest for that period and subsequently she could have lost her earning by 4 months. The Tribunal has fixed at Rs.7,500/- as a notional income. On the facts and circumstance of the case and taking into consideration the nature of place of avocation namely a beautician at Bhavani, Erode, I find that the notional income of the injured may be fixed at Rs.20,000/- per month. Therefore, the loss of income suffered by the claim Petitioner comes to Rs.80,000/- [Rs.20,000/- x 4]. The claim petitioner was taking treatment at Ganga Hospital, Coimbatore as per Ex.P13, P14 and P18.

10. For pain and sufferings Rs.40,000/- awarded by the Tribunal is hereby confirmed. As per Ex.C1/Medical Report issued by the Medical Board, Erode, she suffered 25% of the partial temporary disability. The Tribunal has awarded Rs.2000/- to the claimant for every one percentage of disability and the same is increased to Rs.1,00,000/- (25 x 4000/-). As per Ex.P12, P13, P14, P15 and P18/Medical and Medicine bills, she has spent a sum of Rs.1,26,277/- and



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the same is allowed by the Tribunal, which is also hereby confirmed. For loss of income for the period of four months (20,000/- x 4) Rs.80,000/-, for transportation Rs.10,000/-, for nutrition and extra nourishment Rs.10,000/-, for attender charges Rs.10,000/-, for loss of amenities Rs.10,000/- and damages to cloth and other things Rs.1000/-. Accordingly, the compensation is enhanced, as follows;-

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Partial Temporary Disability	1,00,000
2	Pain and sufferings	40,000
3	Medical expenses	1,26,277
4	Loss of income	80,000
5	Attender charges	10,000
6	Nutrition and extra nourishment	10,000
7	Damages to the cloth and other things	1,000
8	Transportation	10,000
9	Loss of amenities	10,000
	Total	3,87,277

The Tribunal has awarded 7.5% interest. The same is hereby confirmed.

11. In total, the claim Petitioner is entitled to a sum of Rs.3,87,277/-
(Rupees Three Lakhs Eighty Seven Thousand Two Hundred and Seventy Seven



10. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.2,32,645/- to Rs.3,87,277/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the 3rd Respondent/insurance company is directed to deposit the enhanced award amount (excluding the interest for the default period) before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the 1st and 2nd Respondents.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the



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decree only after the receipt of Court fee.

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16.02.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

The Motor Accident Claims Tribunal/
IV-Additional District and Sessions Court,
Bhavani, Erode.

RMT.TEEKAA RAMAN.J,

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**Pre-delivery Judgment made in
C.M.A.No.289 of 2023**

Dated: 16.02.2023