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C.M.A.No.451 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.451 of 2022

Chinthamani

... Appellant

Versus

1.Bhavidiran

2.Karthikeyan

3.The National Insurance Co., Ltd.,
Sendarapatty, Business Centre, 1st Floor,
126/5, Car Street, Gangavalli Taluk,
Salem – 636 110

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 29.11.2021 passed in M.A.C.T.O.P. No.1319 of 2019, by the Motor Accident Claims Tribunal, Special Subordinate Court No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For R1 & R2 : No Appearance

For R3 : Mr.S.Arunkumar



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JUDGMENT

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2.The claim petition was filed stating that on 08.01.2019 at about 12.45 p.m., when the appellant was proceeding to her home by walking, near Seelanayakanpatti to Kondalampatti Road, the rider of the two wheeler bearing Registration No. TN 54 K 3553 (Yamaha R15) came in a rash and negligent manner and dashed against the appellant, due to which, the appellant sustained grievous injuries, admitted in the hospital for a period of two weeks and underwent surgery and hence, she was entitled for compensation.

3.The 2nd respondent a filed counter denying all the averments made in the claim petition and stated that he sold the two wheeler bearing Registration No.TN 54 K 3553 to the 1st respondent on 03.12.2018 and therefore, he is not in any way connected with the vehicle involved in the accident.



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4.The 3rd respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the 1st respondent is the owner cum driver of the vehicle involved in the accident; that the 2nd respondent is not the owner of the vehicle, that the 1st respondent drove the vehicle without driving license and hence, the 3rd respondent is not liable to pay any compensation. Thus, they prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant/claimant examined herself as P.W.1 and marked Ex.P.1 to Ex.P.14. The 2nd respondent had examined himself as R.W.1 and marked Ex.R1 to R4. The 3rd respondent/Insurance Company examined R.W.2-RTO, Salem and marked Ex.W1 and Ex.W2. The Disability certificate and X-ray report were marked as Ex.C1 and C2 respectively.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the 1st respondent and directed the 3rd respondent/Insurance Company to pay the compensation of Rs.4,25,654/- to the



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appellant/claimant and ordered to recover the same from the 1st respondent/owner cum rider of the vehicle since the 1st respondent did not possess driving license.

7. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal challenging the quantum of compensation.

8. Learned counsel for the appellant/claimant submitted that the compensation awarded by the Tribunal is meagre. The Tribunal had fixed a sum of as Rs.7,500/- as notional income of the appellant for the accident that took place in the year 2019; that the appellant was working as agricultural coolie and she was earning a sum of Rs.15,000/- per month; and that since the appellant suffered fracture in the leg, the compensation awarded by the Tribunal under the conventional heads were also meagre and prayed for enhancement of compensation.

9. Though notice sent to the respondents 1 and 2 were served, none entered appearance on behalf of them.



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10.Learned counsel for the 3rd respondent/Insurance Company per contra submitted that the compensation awarded by the Tribunal is excessive; that the compensation awarded under certain heads were unwarranted; that in Ex.C1-disability certificate issued by the Medical Board, the appellant's disability was assessed at 25%; that in the absence of any evidence to show that the appellant suffered functional disability, the Tribunal had rightly applied percentage method and there is no reason to interfere with the said award.

11.The only question involved in the instant appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12.Ex.C1-disability certificate issued by the Medical Board reveals that the appellant had suffered “RTA Clavicle fracture, left distal radius both bone fracture rt leg”. The Medical Board also found that at the time of examination, the appellant had difficulties in walking and climbing stairs and assessed the disability as 25% permanent disability. There is no evidence let in on the side of the appellant to show that on account of the said injury, she had suffered functional disability and consequently



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loss of income. Therefore, this Court is of the view that the Tribunal was right in adopting percentage method in awarding compensation on the basis of the disability certificate. The Tribunal had awarded compensation in the following manner under other conventional heads:

S. No	Description	Amount awarded by the Lower Court (Rs)
1.	Pain and Suffering	35,000
2.	Loss of Income	37,500
3.	Medical Expenses	1,52,154
4.	Transportation	15,000
5.	Extra Nourishment	15,000
6.	Attender Charges	15,000
7.	Damages to clothes	1,000
8.	Loss of Estate	30,000
9.	Permanent Disability	1,25,000

13.This Court is of the view that even assuming that the Tribunal had awarded a meagre sum of Rs.37,500/- under the head loss of income during the treatment period, the compensation awarded under other heads are excessive. Hence, the total compensation awarded by the Tribunal is just and reasonable and there is no reason to interfere with the said findings. Therefore, this Court finds no merits in the present appeal and the same deserves to be dismissed.



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14. In view of the above, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed together with interest at 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit the entire compensation awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment and thereafter, recover the same from the 1st respondent/owner cum rider of the tow wheeler. On such deposit, the appellant/claimant is permitted to withdraw the entire amount along with interest and costs, less the amount already withdrawn, if any. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

rst

To:

1.The Motor Vehicle Accident Tribunal,
Special Subordinate Court No.I, Salem.

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

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