



C.M.A.No.1510 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1510 of 2021

and

C.M.P.No.7876 of 2021

The New India Assurance Company Limited,
having its Divisional Office at D.No.11-19, and
20, 2nd Floor, Peoples Park Building, Government
Arts College Road, Coimbatore – 641 018.

... Appellant

Vs.

1. B.Karthika Devi
2. D.Rajesh Kumar
3. M.Vivek

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgement dated 12.10.2018 in M.C.O.P.No.593 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub Court), Erode.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Mr.M.Manoharan for R1

No Appearance for R2 and
R3

JUDGMENT



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The above appeal is filed by the appellant against the Decree and Judgement dated 12.10.2018 in M.C.O.P.No.593 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub Court), Erode.

2. Though the notice was served on the second and third respondents, however no one appeared on their behalf. Considering the period of pendency of this appeal it is disposed of based on available records.

3. It is the case of the appellant that, on 26.07.2015 at about 4:30 p.m. when the first respondent / claimant was standing near centre median of EVN road opposite Bhuvana Mess, at that time a motor cycle bearing registration No.TN 37 CA 8527 driven by the second respondent in a rash and negligent manner without adhering the traffic rules and regulation had hit the first respondent, due to which the first respondent had fallen down in the road sustaining multiple bone fracture and was taken to the hospital. Claiming compensation for a sum of Rs.15,00,000/- the first respondent / claimant has filed a claim petition.



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4. Before the Tribunal, the claimant had examined P.W.1 and P.W.2 and marked 18 documents viz., Ex.P.1 to Ex.P.18. On the side of the respondents, no documents were examined nor any exhibits were marked by them. After adjudication, the Tribunal awarded a sum of Rs.10,00,000/- as compensation to the claimant / first respondent. Aggrieved over the same, the appellant / insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant / insurance company submitted that, the accident had happened in the middle of the road, which is only due to the careless act of the first respondent. Therefore, the appellant is not entitled to pay any compensation in favour of the claimant. However, the compensation awarded under various heads are highly excessive, which warrant interference.

6. The learned counsel appearing for the first respondent / claimant submitted that, though the appellant claim that the first respondent was standing near the center median and invited the said accident, however, in order to disprove the negligence aspect the claimant examined herself as



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P.W.1 and P.W.2, eye witness and no contra evidence was adduced by the insurance company. Hence, the claim made by the insurance company with regard to negligence does not arise. He further submits that due to the rash and negligent driving of the second respondent, the first respondent / claimant sustained grievous injuries all over her body. As the insurer of the third respondent's vehicle, the appellant is liable to pay the compensation to the first respondent / claimant.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent / claimant and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / insurance company is with regard to the quantum of compensation awarded.

9. Admittedly, the first respondent had sustained multiple injuries



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and appeared before the medical board, which assessed functional disability at 60% and thereby the Tribunal adopted multiplier method under the head “disability and loss of earning power”, based on the evidence of the first respondent, P.W.1 has arrived at a conclusion that the first respondent was not able to continue her avocation after the accident occurred, as per the decision of the Hon'ble Apex Court in the case of *Raj Kumar Vs. Ajay Kumar & Anr.* reported in *2011 (1) SCC 343*. However, on a perusal of the claim statement as well as the evidence of P.W.1 reveals that the claimant was earning Rs.20,000/- per month by running a mess named Bhuvana Mess and she claims that she was not able to continue her avocation as before, however, she did not claim that she did not run the mess after the accident had occurred. In the absence of any evidence or proof that the claimant was not running the mess after the said accident, the adoption of multiplier method by the Tribunal for awarding compensation under the head disability and loss of earning power has to be interfered and the same is also contrary to the decision of the Apex Court in the case of *Raj Kumar Vs. Ajay Kumar & Anr.* reported in *2011 (1) SCC 343*.



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10. Further, considering the fact that the accident is of the year 2015 and also considering the age and the nature of injuries sustained by the 1st respondent, this Court deems it fit to fix a sum of Rs.4,000/- per percentage of disability. Therefore, the compensation awarded under the head disability and loss of earning power stands modified to Rs.2,40,000/- ($4,000 \times 60 = 2,40,000/-$).

11. Further, the Tribunal had awarded Rs.4000/- towards transport expenses which is on the lower side and the same is enhanced to a sum of Rs.5,000/-; Rs.6,000/- towards extra nourishment which is very meagre and the same is enhanced to a sum of Rs.10,000/-. No amount has been awarded under the head “attender charges” and this Court is inclined to fix a sum of Rs.5,000/- under the said head. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

12. In view of the above, the compensation awarded by the Tribunal is modified as under :-



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S.No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of Income	45,000/-	45,000/-
2	Transport expenses	4,000/-	5,000/- (enhanced)
3	Extra nourishment	6,000/-	10,000/- (enhanced)
4	Damages for clothes and Articles	500/-	500/-
5	Medical Expenses	94,800/-	94,800/-
6	Pain and Sufferings	60,000/-	60,000/-
7	Disability and loss of earning power	7,89,700/-	2,40,000/- (reduced)
8	Attender charges	-	5,000/-
	Total	10,00,000/-	4,60,300/-

13. Accordingly, this appeal is allowed in part and the compensation amount is reduced from Rs.10,00,000/- to Rs.4,60,300/- and the appellant / Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.593 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to



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transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
rap

To

- 1.Motor Accident Claims Tribunal (Special Sub Court), Erode.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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