



C.M.A.No.1701 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1701 of 2023

Palaniyammal

... Appellant

Vs

1.Shanmugam

2.The Reliance General Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Omalar Main, Bharathi Street,
Swarnapuri, Salem.
[R1 remained ex parte before the Tribunal]

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award in the order dated 29.09.2022 made in MCOP.No.202 of 2019, on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Paramathy.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.P.Suresh Srinivasan, for R2
R1 – Ex parte



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 29.09.2022, made in M.C.O.P. No.202 of 2019 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Paramathy.

2. The appellant filed M.C.O.P. No.202 of 2019 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Paramathy claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 03.06.2019.

3. According to the appellant, on the date of accident, i.e. 03.06.2019 at 11.00 am, while she was walking on the Pudupalayam to Vadakkipalayam road, near Veeramathi Amman Temple, the rider of the motorcycle bearing Registration No.TN-88-X-5776, rode the same in a rash and negligent manner, came from behind and hit the appellant; that in the above said accident, the appellant sustained grievous injuries and hence, filed claim petition claiming compensation against the respondents.



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4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed a counter statement stating that the accident has occurred due to the negligent act of the appellant, who attempted to cross the road suddenly and invited the accident; that the second respondent is not liable to pay compensation to the appellant; and that in any event the total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined herself as PW1 and marked twelve documents as Ex.P.1 to Ex.P.12. On the side of the respondent, one Dinesh was examined as RW1 and six documents were marked as Exs.R1 to R6. Court document was marked as Ex.C1 / Disability certificate issued by Medical Board.

7. The Tribunal after considering the evidence and documents filed on the side of the appellant as well as the respondents, held that the accident occurred due to the rash and negligent riding of the motorcyclist and directed the second respondent to pay a sum of Rs.2,35,457/- as



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compensation to the appellant at the first instance and recover the same from the first respondent.

8. Aggrieved by the said order, the appellant has preferred the present appeal seeking enhancement of compensation.

9. The learned counsel for the appellant submitted that though the Tribunal had accepted the disability certificate issued by the Medical Board, had awarded a very meagre compensation. The Tribunal ought to have seen that the deceased was 79 years old and she was taking treatment for more than two months and hence, loss of income would be assessed for a period of three months. The award under other heads are also meagre and prayed for enhancement.

10. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared.



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11. Per contra, the learned counsel for the second respondent submitted that the injuries suffered by the appellant were simple in nature and the Medical Board assessed the permanent disability at 18%. The learned counsel further submitted that in the absence of any documentary evidence to show that the appellant suffered functional disability, the Tribunal had rightly adopted the percentage method for awarding compensation. The appellant has not established loss of income during the period of treatment. The appellant was in the hospital for 7 days and thereafter, discharged. Therefore, the Tribunal was right in holding that the loss of income can be computed only for half a month; that the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

12. The only question in the instant appeal is-

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?



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13. From the materials on record, it is seen that the appellant was examined by the Medical Board. The Medical Board examined the appellant and issued Ex.C1 disability certificate assessing the permanent disability at 18%. There is no evidence on the side of the appellant to show that she had suffered any functional disability and consequentially suffered loss of income on account of the injuries. Therefore, the Tribunal was right in awarding compensation by adopting percentage method. Therefore, the compensation awarded by the Tribunal at Rs.90,000/- (5,000x18) for disability, is just and reasonable. Likewise, in the absence of any documents to prove the income of the appellant, the Tribunal had fixed the notional income as Rs.6,500/- per month and held that the appellant was entitled to half a month income towards loss of income during the period of treatment. This Court is of the view that the Tribunal was right in fixing the loss of income since there is no evidence on the side of the appellant to show her avocation or the loss of income during the period of treatment. The award of compensation under the other heads are also just and reasonable and hence no interference is called for. Therefore, the award passed by the Tribunal in MCOP.No. 202 of 2019 on the file of Motor



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Accident Claims Tribunal/Subordinate Judge Court, Paramathy dated

29.09.2022 is confirmed and the Civil Miscellaneous Appeal is dismissed.

14. The appellant is permitted to withdraw the entire compensation amount deposited by the second respondent.

07.08.2023

Index: Yes/No

Neutral Citation: Yes/No

AT

To

1.The Motor Accident Claims Tribunal /
Subordinate Judge Court, Paramathy.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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