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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2181 of 2014
and MP.No.1 of 2014

IFFCO-TOKIO General Insurance Company Ltd.,
JH Tower, 2nd Floor,
New No.24, Old No.302,
LIC Colony Road,
Salem District – 636 004. ... Appellant

vs.

1. Kavi Priya

2. K.P.Success Sabarinathan ... Respondents
(The 2nd Respondent is already
set exparte before the trial Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.12.2013 made in M.C.O.P.No.485 of 2012 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Namakkal.

For Appellants : Mr.C.R.Krishnamoorthy
For Respondent : Mr.Desinghu for R1



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JUDGMENT

Challenge is made against the judgment and decree passed in MCOP.No.485 of 2012 dated 17.12.2013 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Namakkal, questioning the liability as well as quantum by the Insurance Company.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1998, claiming compensation of Rs.8 lakhs for the injuries sustained in a road accident that occurred on 22.05.2011. The Tribunal concluded that, the second respondent liable to pay the compensation of Rs.7,68,500/- with interest at the rate of 7.5% per annum from the date of filing of the petition.

3. The learned counsel appearing for the Appellant / Insurance Company would vehemently argued that PW.1 has admitted during her cross examination that only due to the rash and negligent driving of an un-registered two wheeler, the accident occurred, therefore, the Insurance company is not liable. As the second respondent/Insurance company is an insurer of two wheeler bearing registration No.TN28 AF 7841 which



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belongs to the respondent's father. Hence, the Insurance Company is not liable to compensate the claim herein.

4. With regard to quantum, the learned counsel appearing for the appellant would claim that as per Ex.P.7, Medical Records, the claimant suffered Trochantric fracture of right hip. The disability was fixed at 55%, for which the multiplier method ought not to have been adopted. Whatever be the case, the multiplier chosen is incorrect and sought for a change.

5. Per contra, the learned counsel appearing for the respondent/claimant would strenuously contend that in the claim petition in column – 23 it is pleaded that due to the rash and negligent driving of the two wheeler in which she travelled the accident occurred. It is his father alone caused the accident. His further argument is that, as per the law laid down by this Court in **National Insurance Company Vs. P. Rajalakshmi reported in 2019 (1) TN MAC 545**, this Court has held that “the contradiction between FIR and statement on oath alone to be given evidentiary value”. The Judgment in **National Insurance Company Limited Vs Chamundeswari and another reported in CDJ 2021 SC**



739, it has been held as follows:

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“In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report”.

6. It was further contended that Doctor Sivakumar PW.2, who treated the claimant has opined that the first respondent suffers from malunion. In the given circumstances, the income fixed and the multiplier adopted considering the impact of the injury are reasonable and pleaded to confirm the order of the Tribunal.

7. Heard the arguments of the learned counsel appearing on both sides and perused the materials available on record.

8. During Trial on the claimant side, the injured Kavipriya was examined as PW.1 Dr.Sivakumar who treated the injured was examined as PW.2. Exs.P.1 to P.13 were marked. Discharge summary is Ex.P.6. Proof for her educational qualification are Exs.P.9 and P.10. Disability certificate is Ex.P.13.



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9. On the Respondent / Insurance company side, Officer of the insurance company, Thiru Govindasamy was examined as RW.1 and copy of the FIR and the charge sheet are Exs.R1 and R2.

10. It is the evidence of the injured PW.1 that on 22.05.2011 at about 8.30 p.m, when her father was riding the two wheeler bearing registration No.TN28 AF 7841 and when she was travelling as a pillion rider, along the Namakkal Thuraiyar - road at the junction of Trichy road due to rash and negligent driving of her father, he hit on the two wheeler which was un-registered and she sustained serious injuries.

11. On perusal of Ex.P.1 FIR, the case was registered against the rider of the un-registered Honda Activa, two wheeler and charge sheet was also laid against the said rider.

12. The learned counsel appearing for the Appellant would



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strenuously contend that based on Exs.R1 and R2 namely FIR and charge sheet, it would not lie in the mouth of the injured that due to rash and negligent driving of her father, the accident occurred.

13. The learned counsel for the Respondent drew the attention of this Court by referring to the observation made by this Court, in National Insurance Company Vs Chamundeswari and another as mentioned supra. FIR is not the substantive piece of evidence. This report is registered on the basis of the information given by the informant. Therefore, it is a record only based on the information given by the informant. Of course, FIR can be used for the purpose of corroborations and contradictions in criminal cases. PW.1 has filed her proof affidavit and she was duly cross examined. Therefore, among the details found in the FIR and the evidence of PW1, undoubtedly, the evidence of PW1 has been given preference for the reasons mentioned supra.

14. The learned counsel appearing for the Insurance company claimed that PW.1, stated that due to rash and negligent driving of the driver of un-registered two wheeler vehicle the accident occurred. To decide



the said details, the evidence of PW.1 is to be throughly gone into. She has stated that only her father hit on the other two wheeler. Therefore, relying upon the evidence of PW.1, it was concluded that the Insurance



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company is liable to compensate the insured petitioner, cannot be found fault with.

15. PW.1 / Kavipriya, was aged about 27 years old at the relevant point of time. At the time of the accident she suffered fracture of right hip, she was admitted at the Namakkal MM hospital as in-patient for about 23 days as per Ex.P.2 and Ex.P.6. During the treatment period she had undergone surgery for the problem of fracture over hip. Plate and screw were fixed. It is the evidence of Dr.Sivakumar PW.2 that she suffers from mal union, and she would find difficult to sit, squat and climb the stairs. It is the further evidence that her leg is shortened and she is limping and fixed the disability at 55%.

16. In the given circumstances, the Tribunal has invoked the multiplier method and granted compensation to the injured. In Rajkumar Vs Ajaykumar reported in 2011 1 SCC 243, it has been held that,

“Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The tribunal has to first ascertain what activities the claimant could carry on, in spite of the permanent disability



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and what he could not do as a result of the permanent disability. The second step is to ascertain his avocation, profession and nature of work before the accident as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can to continue his livelihood.”

17. From the evidence of injured as well as the doctor who assessed the disability PW-2 it is disnerable, that the injured was working in a computer company. Of course, she would sit and do the work in the office. But having undergone surgery, over the hip by fixing plates and screws definitely it would be difficult for her either to walk, stand, climb up stairs or boarding bus etc. But if she choses to work she has to face all those difficulties. PW.2/ Dr.Sivakumar has assessed the disability at 55%. Relying upon the above said details, this Court deems fit to fix the functional disability at 50%.

18. The Tribunal has fixed the income of the injured at Rs.5,000 per month by adopting 18 multiplier, the disability at 55% and the loss of



dependency was worked out at Rs.5,94,000/-. The functional disability is

fixed at 50% and therefore, the loss of dependency is re-worth as follows

Rs.5000x12x18x50%. In all other aspects, the amounts awarded by the

Tribunal appears to be reasonable and needs no interference. The

compensation awarded is re-worked and tabulated as follows:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	For Loss of dependency	Rs. 5,94,000/-	Rs. 5,40,000/-	Reduced
2	For Medical expenses	Rs..98,532/-	Rs..98,532/-	Confirmed
3	For Transport Expenses	Rs. 1,000/-	Rs. 1,000/-	Confirmed
4	For pain and suffering	Rs. 40,000/-	Rs. 40,000/-	Confirmed
5	For Extra nourishment	Rs.35,000	Rs.35,000	Confirmed
	TOTAL by the Tribunal	Rs. 7,68,532/-	Rs.7,14,532	Reduced
	Rounded off		Rs. 7,14,500/-	

19. Thus, the compensation awarded by the Tribunal is reduced from



Rs.7,68,532/- to Rs.7,14,532/- which would carry interest at the rate of 7.5% per annum.

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is reduced from Rs.7,68,532/- to Rs.7,14,532/-.

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., Rs.7,14,500/- (less the amount already deposited, if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.485 of 2012 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal within a period of eight weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the 1st respondent / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law.

22.09.2023



Index : Yes/No

Speaking / Non-speaking order

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To:

1. The Motor Accident Claims Tribunal,
Additional District Court, Namakkal.

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



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R.KALAIMATHI, J.,

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