



C.M.A.No.961 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.06.2023

PRONOUNCED ON: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.961 of 2014

Indirani

... Appellant/Petitioner

Vs.

1. Anguraj

2. Bajaj Allianz General Insurance Co., Ltd.,
D.No.42, 1st Floor, SAR Complex,
Sathy Road, Erode

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as amended by Act 54 of 1994 praying to set aside the Judgment and decree dated 30.10.2013 made in M.C.O.P.No.53 of 2012 on the file of the Motor Accidents Claims Tribunal, Thiruchengode.

For Appellant	:	Mr. C.Kulanthaivel
For R1	:	Dispensed with
For R2	:	Mr.K.Poomalai



C.M.A.No.961 of 2014

JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation awarded in M.C.O.P.No.53 of 2012, dated 30.10.2013 on the file of the Motor Accidents Claims Tribunal, Tiruchengode, wherein, the Tribunal has awarded a sum of Rs.1,49,659/- as compensation for the injuries sustained by the claimant in the accident taken place on 08.03.2012.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. On 08.03.2012, at about 5.30 p.m., the petitioner was travelling in a two-wheeler ridden by her husband bearing registration No.TN 34 P 2514, Honda Activa on Salem to Tiruchengode main road, near Sempampalayam bus stop, at that time, due to the rash and negligent driving of her husband, the two-wheeler fell down, on the ground and the petitioner sustained grievous injuries on her right back head and right shoulder and immediately she was taken to the Tirukumaran Hospital, Tiruchengode and later shifted to the KMCH Hospital, Coimbatore. The FIR was also



C.M.A.No.961 of 2014

registered against the driver/her husband in Crime No.75/2012 under Sections 279 and 337 IPC and due to the injuries sustained she claimed compensation for a sum of Rs.5,00,000/- before the Tribunal.

4. The first respondent is the husband and owner of the vehicle who had ridden the two-wheeler, remained ex-parte before Tribunal. The second respondent, Insurance Company filed their counter and contended that the rider of the vehicle, in which, the claimant was travelled was not having valid driving licence at the time of accident. The complaint was originally given by the claimant against one unknown car, it is stated that to avoid being hit by the car, the rider of the two-wheeler turned the vehicle on the corner of the road which resulted in losing control of two-wheeler they fell down. Hence, this respondent is not liable to pay compensation. The claim is also exaggerated before the Tribunal.

5. Before the Tribunal, the petitioner was examined herself as P.W.1 and two Doctors were examined as P.W.2 and P.W.3 and documents were marked as Exs.P1 to P11 and on the side of the second respondent, Insurance official one S.Meganathan was examined as R.W.1 and Exs.R1 and R2 were marked.



6. The Tribunal after considering the evidence adduced on behalf of both sides has come to the conclusion that both the rider of the two-wheeler and the unknown car are equally responsible for the accident.

7. The learned counsel for the appellant/claimant has contended that there is no involvement of car in the occurrence. In the FIR - Ex.P1, it is stated by the claimant that her husband was riding the two-wheeler on the Highway and a car came very near to the two-wheeler, hence her husband turned the two-wheeler into the mud road and the two-wheeler fell down, which resulted in causing injuries to the petitioner. There is no fault on the unknown car driver, only the driver of the two-wheeler made wrong move and rode the vehicle in the mud road, which resulted in causing injuries to the pillion rider. He has also contended that the quantum fixed for the injuries sustained by the appellant is on the lower side. Hence prays to set aside the finding of negligence on the part of the unknown car and to increase the quantum of compensation awarded under various heads.

8. The Insurance Company has not filed any appeal in this case against the above award.



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C.M.A.No.961 of 2014

9. The points for consideration arises in this appeal as follows:

1. Whether the liability to pay compensation to the extent of 50% fixed on the unknown car is proper?
2. Whether the quantum of compensation awarded by the Tribunal is liable to be increased?

10. Point No.1:

Claimant in her evidence stated that on 08.03.2012 at about 5.30 p.m., she was travelling on Salem to Tiruchengode main road, near Sempampalayam bus stop, as a pillion rider and her husband was riding the two-wheeler bearing registration No. TN 34 P 2514, at that time, an unknown car came behind the two wheeler and to avoid being hit by the car, her husband moved further left on the side of the road, lost control, she fell down and suffered injuries. In the cross examination, it is admitted by her that the unknown car had dashed on the two-wheeler and she had not aware about the details of the car. This evidence shows that the unknown car had hit on the two-wheeler and subsequently, the rider turned his two-wheeler on the mud side of the road and lost control resulting in causing injuries. This admission is sufficient to held that the car is also involved in the



accident. The Tribunal has considered this admission and has rightly held that the unknown car is also involved in the accident and fixed responsibility on both car as well as the two-wheeler for the accident.

11. Evidence of P.W.3-Medical Officer is that at the time of admission of the claimant for treatment, it is reported that, the claimant has suffered injuries while driving in a two-wheeler, hit by a car on 08.03.2012 at about 4.00 p.m. This Accident Register and Intimation Report-Ex.R1 was issued even prior to the registration of Ex.P1 – FIR, corroborates the contention of the Insurance Company.

12. As stated supra, the Insurance Company has not challenged the above finding and the claimant alone filed this appeal to contend that the rider of the two-wheeler i.e., petitioner's husband is responsible for the entire accident. But evidence placed on record is otherwise shows that the car is responsible for the accident. Since no challenge has been made by the Insurance Company regarding the above finding, this Court accepts the finding of the Tribunal fixing the liability for the car as well as the driver of the two-wheeler equally. Thus, point No.1 is answered accordingly.



13. Point No.2: With regard to the quantum, the Tribunal is

awarded compensation for the following heads:

Partial loss of earnings at Rs.10,000/-; Transport to Hospital at Rs.2,000/-; Extra Nourishment at Rs.5,000/-; Damages to clothing and article at Rs.1,000/-; Other medical expenses at Rs.96,659/-; Pain and Sufferings at Rs.5,000/- and Permanent Disability and Loss of earning Power at Rs.30,000/-. The total compensation was fixed by the Tribunal is at Rs.1,49,659/-.

14. The claimant marked Ex.P8 / Discharge Summary which shows that the final diagnosis of the injuries suffered. It is recorded that “ *Left Temporo Parietal Contusion with Thin SDH with Mass Effect Soft Tissue Injury. Eye – Bilateral Disc Edema*”. Ex.P9 is the Disability Certificate. Based on the injuries sustained by the petitioner, disability has been assessed by the Doctor - P.W.2 and he gave opinion that the petitioner is having “*dominant right side of head's Malunited fracture Right side Temporal bone of head*” and suffered 24% partial permanent physical disability, but he has not deposed that the same is functional disability.



15. The Tribunal has reduced the percentage of injury given into 15% without giving any adequate reasons. In ***Rajkumar vs. Ajaykumar and another*** reported in ***2010 (2) TNMAC 581 SC : 2011 (1) SCC 343***, the Hon'ble Apex Court has laid down the guidelines for assessing injuries. The claimant is a lady aged about 48 years suffered “*dominant right side of head's Malunited fracture Right side Temporal bone of head*”.

16. The petitioner has examined the Doctor who has given treatment to her and another P.W.2 who has examined her disability the P.W.2/Doctor assessed the disability as 24% after assessing the nature of injury sustained by her, he also stated that the above injury is not functional permanent disability. I am of the view that the Tribunal ought not to have reduced the percentage of disability fixed by P.W.2.

17. Hence I am inclined to modify the loss of percentage of disability fixed by the Tribunal at 15% into 24% and Rs.2,000/- fixed for each injury [Rs.2,000/- X 24% = Rs.48,000/-]. Thus total compensation awarded under the head Disability and Loss of earning power is at Rs.48,000/-. The Tribunal has awarded Rs.5,000/- for pain and sufferings



since she has suffered injury on her head, modified to Rs.20,000/- under the head pain and sufferings. The Tribunal has awarded a sum of Rs.5,000/- for the head Extra Nourishment is very meagre hence I am inclined to modify a sum of Rs.10,000/- for Extra Nourishment. The claimant had undergone treatment from 08.03.2011 to 22.03.2011 as in-patient, hence she has been rightly awarded two months pay as loss of income quantified as Rs.5,000/- per month [Rs.5,000/- X 2 = Rs.10,000/-].

18. Accordingly, the award passed by the Tribunal under various heads are hereby modified is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earnings	Rs.10,000/-	Rs.10,000/-	Confirmed
2.	Transport to Hospital	Rs.2,000/-	Rs.2,000/-	Confirmed
3.	Extra-Nourishment	Rs.5,000/-	Rs.10,000/-	Enhanced
4.	Damages to cloth and articles	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Other Medical expenses	Rs.96,659/-	Rs.96,659/-	Confirmed
6.	Pain and Sufferings	Rs.5,000/-	Rs.20,000/-	Enhanced



C.M.A.No.961 of 2014

7.	Permanent Disability & Loss of earning Power	Rs.30,000/-	Rs.48,000/-	Enhanced
	Total	Rs.1,49,659/-	Rs.1,87,659/-	Enhanced by Rs.38,000/-
	50% of the award amount		Rs.93,829.50/- @ Rs.93,830/-	

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,49,659/- is hereby enhanced to Rs.1,87,659/- [Rupees One Lakh Eighty Seven Thousand Six Hundred and Fifty Nine only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit 50% of the award amount, i.e., Rs.93,829.50/- rounded of Rs.93,830/- [Rupees Ninety Three Thousand Eight Hundred and Thirty Only] now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.53 of 2012, on the file of the Motor Accidents Claims Tribunal, Tiruchengode. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded by this Court along with interest and costs, less the amount if any, already



C.M.A.No.961 of 2014

withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any proper application. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

14.07.2023
(1/2)

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Index :Yes/No

Speaking Order :Yes/No

Neutral Citation Case : Yes/No

To:

1. The Motor Accidents Claims Tribunal,
Tiruchengode.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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C.M.A.No.961 of 2014

K.RAJASEKAR,J.

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Pre delivery Judgment made in
C.M.A.No.961 of 2014

14s.07.2023

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