



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on :15.02.2023

Judgment pronounced on :.....04.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2987 of 2022

Visalakshi

...Appellant

Vs.

1.Nirmal Dasan

(R1 remained exparte before the Tribunal)

2.The Branch Manager,

Reliance General Insurance Co.Ltd.,

Vivyn Plaza, No.89, 1st Floor,

100 Feet Road, Mudaliarpeta,

Pondicherry – 605 004.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 12.04.2019, in M.C.O.P.No.842 of 2017, on the file of the Motor Accidents Claims Tribunal, (Additional Sub-Judge), Puducherry.

For Appellant : Mr.R.Sreedhar

For R1 : Exparte before the Tribunal

For R2 : Mr.P.Suresh Srinivasan



JUDGMENT

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The appellant is the claimant in M.C.O.P.No. 842 of 2017, on the file of the Motor Accidents Claims Tribunal, the Additional Sub-Judge, Pudhucherry. She has filed the above said claim petition under Section 166(1)(a) of the Motor Vehicles Act, 1988, seeking compensation of Rs.7,00,000/- for the injuries sustained by her in a road accident that took place on 03.05.2017.

2. The brief case of the appellant/claimant is as follows:-

(i) The appellant/claimant was aged 60 years on the date of the accident. She was working at Vegetable Vendor and earning a sum of Rs.10,000/- per month.

(ii) On 03.05.2017, at about 7.30 pm., the appellant/ claimant was going as a Pedestrian and crossing the road in front of Mariamman Koil, Ariyankuppam-Veerampattinam Main Road, Kaakkayanthoppu, Puducherry towards south to north direction. At the same time on the same road towards East to West direction the Yamaha FZ motorcycle bearing Registration No.PY 01 CB 7603 ridden by one namely Arunprasanth in a very rash and negligent manner at high speed, even without hooting horn so as to endanger to human life and dashed the petitioner severely. Due to the said accident, the appellant/claimant



sustained grievous injuries over her head and multiple injuries all over her body.

(iii) Immediately after the accident, the appellant/claimant was taken to Government Hospital, Puducherry. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/ claimant.

3. The owner of the Yamaha motorcycle bearing Registration No.PY 01 CB 7603, was absent before the Tribunal, and therefore, he was set ex-parte. The Reliance General Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 and PW2 were examined and Exs.P1 to Ex.P11 were marked. On the side of the respondents, no witness was examined and no documents were marked. Ex.C1 is marked.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs.3,25,000/- as compensation together with interest at the rate of 7.5% per annum. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



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5. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence driving fixed on the part of the rider of the said motorcycle, is not in dispute and the same is hereby confirmed.

6. The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant sustained grievous injuries over her head and multiple injuries all over her body. He would contend that the appellant/claimant was admitted as an in-patient in the Government Hospital, Puducherry. The duty Doctor confirmed that the claimant sustained severe head injury and till date she is continuing her treatment as an outpatient. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.

7. The learned counsel appearing for the second respondent/Reliance General Insurance Company Limited would contend that as per the investigation report of the investigator, the claimant Visalakshi suddenly crossed the road without noticing the oncoming Yamaha motorcycle and the claimant herself dashed against the



motorcycle. Hence, the second respondent/Insurance Company states that the fault lies on the part of the claimant and there is no fault on the part of the driver who drove the motor-cylce. The accused Yamaha motorcycle driver had only a learner's licence at the time of alleged accident. Hence, the second respondent/Insurance Company is not liable to pay any compensation to the claimant.

8. Based upon the oral and documentary evidence, the Tribunal has rejected the contention of the Insurance Company that the claimant has cross the road in a negligent manner and thereby, she has contributed to the negligence.

9. Ex.P8 and Ex.P9 is the photocopy of Discharge slip of the appellant/petitioner issued by Indira Gandhi Government General Hospital and Post Graduate Institute, Puducherry which reveals that the appellant was admitted on 03.05.2017 and discharged on 16.05.2017 and another discharge slip was admitted on 17.05.2017 and discharge to 01.06.2017. To prove the disability sustained by him, the appellant was referred to Medical Board, as per the order of the Hon'ble Apex Court and the said report dated 09.02.2019 was marked as Ex.C1 on 19.03.2019. In Ex.C1, the Medical Board has assessed the disability of the appellant at 40% and opined "Traumatic Brain Injury Sequel".



Considering the nature of injuries sustained and the Medical Board Certificate, the Tribunal assessed the appellant's disabilities as 40% for the purpose of calculation of compensation and accordingly, 40% disability, as derived by Medical Board as per Ex.C1, a sum of Rs.1,20,000/- is awarded as compensation at the rate of Rs.3,000/- ($40\% \times 3000/- = \text{Rs.}1,20,000/-$) under the head 'disability', and the same is hereby confirmed.

10. It is seen that due to the injuries suffered by the claimant, she could not attend her duties, and hence, as there is no award under the heads 'loss of amenities', this Court awards the same in a sum of Rs.15,000/-.

11. Since the appellant/claimant was admitted as an inpatient for 30 days, a sum of Rs.10,000/- granted by the Tribunal towards the 'attender's charges' is hereby enhanced to Rs.15,000/-. All the other heads are awarded by the Tribunal is hereby confirmed.

12. Accordingly, the award of the Tribunal in M.C.O.P.No. 842 of 2017 is modified as follows:



Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Permanent disability	Rs. 1,20,000/-	Rs. 1,20,000/-
2.	Pain and sufferings	Rs. 1,00,000/-	Rs. 1,00,000/-
3.	Medical Expenses	-----	-----
4.	Loss of income	Rs. 60,000/-	Rs. 60,000/-
5.	Rich and nutritious food	Rs. 25,000/-	Rs. 25,000/-
6.	Attender charges	Rs. 10,000/-	Rs. 15,000/-
7.	Transport Expenses	Rs. 10,000/-	Rs. 10,000/-
8.	Loss of amenities	----	Rs. 15,000/-
	Total	Rs. 3,25,000/-	Rs.3,45,000/-

The compensation awarded by the Tribunal is enhanced from Rs.3,25,000/- to Rs.3,45,000/- which shall carry interest at the rate of 7.5% per annum.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.



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(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,25,000/- to Rs.3,45,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/Reliance General Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.3,45,000/- (less the amount already deposited) 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. 842 of 2017, on the file of the Motor Accidents Claims Tribunal, Additional Sub-Judge, Puducherry, within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

.....04.2023

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Index : Yes/No

Speaking/Non-speaking order

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To

1.The Motor Accidents Claims Tribunal,
The Additional Sub-Judge,
Puducherry.

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



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RMT.TEEKA RAMAN, J.

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Pre-Delivery Judgment in
C.M.A.No.2987 of 2022

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