IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2410 of 2023

Atchaya ... Appellant

Vs.

1.Suman

2.Sunil

3.HDFC ERGO General Insurance Co. Ltd.
Empire Arcade, 356/1, Omalur Main Road
Opp: New Bus Stand, Salem 636 001 ... Respondents

PRAYER:This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order in M.C.O.P.No.78 of 2022, dated 21.12.2022, on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge No.II, Salem.

For appellant : Mr.T.S.Arthanareeswaran

For respondents : Ms.C.Harini
for M/s.M.B.Gopalan & Co., - R3

R1 and R2 - D/w on 05.10.2023

JUDGMENT

On 21.08.2021, while the claimant / appellant herein was riding a motor cycle bearing No.TN 93 B 3321 from North to South in Kondalampatti to Thiruvagoundan Road, a lorry bearing No.KA 02 AH 7116, belonging to the 1st respondent and insured with the 3rd respondent came from behind and knocked her leaving the claimant injured with fracture to her radius ulna of her right forearm. Her injury was surgically corrected and she was in the hospital for five days. Seeking compensation for the injury suffered due to negligence of the driver of the lorry, the claimant approached the Motor Accidents Claims Tribunal (Special Subordinate Judge No.II), Salem, in M.C.O.P.No.78 of 2022 for compensation.

2.The disability of the claimant was assessed at 15% by the Medical Board vide Ex.C1 and the Tribunal had awarded Rs.5,000/- for every percentage of disability and awarded a sum of Rs.75,000/- under this head. The Tribunal attributed 15% negligence to the claimant on the ground that she did not possess a driving licence and arrived at a net compensation of Rs.2,97,839/-.

3.The award of the Tribunal reads as below:

Sl.No.	***Heads***	***Amount (Rs.)***
1	For permanent disability (15% x Rs.5,000/-)	Rs. 75,000/-
2	For pain and sufferings	Rs. 15,000/-
3	For loss of amenities	Rs. 15,000/-
4	Towards Medical Expenses	Rs.1,26,839/-
5	Loss of income during treatment (Rs.10,000/- x 3 months)	Rs. 30,000/-
6	For Transportation	Rs. 10,000/-
7	For Extra Nourishment	Rs. 10,000/-
8	Attendant charges	Rs. 15,000/-
9	For damages to clothes	Rs. 1,000/-
	Total	**Rs.2,97,839/-**

Aggrieved by the deduction of 15% as constituting claimant's negligence, the claimant is before the Court.

4.Heard both sides.

5.It is an undisputed fact that the claimant did not possess a valid driving licence to ride the motorcycle at the relevant time. While it is an offence, should it necessarily be construed as contributing to the accident? This depends on how the accident had taken place. If for want of a driving licence, a rider of a motorcycle was created a situation when accident became inevitable, then that stands at a certain footing. If however, accident had taken place which cannot be related to the mode of riding a motorcycle, then an absence of a driving licence *per se* cannot be construed as contributory factor to the negligence.

6.In the instant case, it is an admitted fact that the lorry hit the motorcycle from behind. Law of negligence is all about who had the best opportunity to avoid an accident. Unless it is established that the mode of riding the motorcycle by the victim of the accident had rendered the accident inevitable, it has to be held that the driver of the offending lorry had the best opportunity to avoid that accident. On this aspect, the 3rd respondent did not examine the lorry driver. It is also not the case of the Insurance Company that the accident was an inevitable accident.

7.In these circumstances, this Court holds that 15% contributory negligence to the rider of the motorcycle may not be tenable.

8.Turning to the other conventional heads of compensation, this Court finds that the Tribunal had awarded mere Rs.15,000/- towards pain and suffering, which this Court now doubles to Rs.30,000/-.

9.To conclude, this Court allows the appeal as follows:

(i) The award of the Tribunal is enhanced to Rs.3,13,000/- (Rs.2,97,839/- + Rs.15,000/- = 3,12,839/-) rounded off to Rs.3,13,000/- from Rs.2,97,839/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The 3rd respondent / Insurance Company is now required to deposit a sum of Rs.3,13,000/-, less any sum which it had already deposited with interest at Rs.7.5% throughout to the credit of M.C.O.P No.78 of 2022 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.II, Salem, within a period of six (6) weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the appellant / claimant is entitled to withdraw the entire compensation with interest as per existing rules on filing necessary application before the Tribunal, after the payment of court fee for the enhanced compensation, if any.

(v) The Registry is directed to draft the decree only after the receipt of enhanced court fee.

N.SESHASAYEE

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(vi)The claimant is not entitled for any interest for the period of default, if any.

(vii) There is no order as to costs.

06.11.2023

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Index : Yes / No
Neutral Citation

To.

The Motor Accidents Claims Tribunal
Special Subordinate Judge No.II
Salem

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