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C.M.A.No.456 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.456 of 2023

Jaseetha

... Appellant

vs.

1.J.Sakthivel

2.United India Insurance Company Ltd.,
No.134, 4th Floor,
Silandhi Building, Greams Road,
Chennai - 600 108

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2021 made in M.C.O.P.No.5327 of 2017, on the file of the Motor Accidents Claims Tribunal/IV Small Causes Court at Chennai.

For Appellant : Mr.Ma.P.Thangavel
For Mr.M.Lokesh

For R2 :Mr.C.Paranthaman



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JUDGMENT

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The appeal has been filed against the award and decree dated 07.10.2021 made in M.C.O.P.No.5327 of 2017, on the file of Motor Accident Claims Tribunal / IV Small Causes Court, Chennai.

2. The claim petitioner is the appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The claim petitioner filed the above appeal, seeking compensation for the injuries sustained by him in a road traffic accident on 17.07.2017. The Tribunal has arrived a sum of Rs.2,89,185/- and by deducting 20% contributory negligence for non-possession of driving license, awarded a sum of Rs.2,31,348/- with interest at the rate of 7.5% and costs. Aggrieved against the same, she has preferred this Civil Miscellaneous Appeal.

4. Heard the learned counsel for the claim petitioner and the learned counsel for the Insurance Company.

5. According to the claim petitioner on 17.07.2017 at about 2.30p.m, when the petitioner was riding a motor cycle bearing registration No.TN-07-BX-6310 towards KV CLRI School in Guindy near CLRI staff



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quarters gate, Sardar Vallabai Patel Road. At the time, the driver of the car bearing Registration No.TN-13-F-6441 driven by its driver in a rash and negligent manner endangering public safety and hit the motor cycle bearing registration No.TN 07 BX 6310 behind back. Due to which the claim petitioner sustained grievous injuries.

6. During the trial, the claim petitioner examined herself as P.W.1 and marked Exs.P1 to P8. Ex.C1, Disability Certificate issued to the petitioner by the Regional Medical Board is also marked. On the side of the respondents, no oral or documentary evidence has been let in, especially the driver of the car, which is said to be an offending vehicle was not examined.

7. On perusal of evidence of P.W.1/injured claim petitioner and document Ex.P1, F.I.R, it appears that offending vehicle car bearing Registration No.TN 13 F 6441 driven by its driver in a rash and negligent manner endangering public safety and hit the petitioner two wheeler behind the back and though the Tribunal have observed that accident happened due to rashness of offending vehicle car, but fixed 20% contributory negligence on the part of appellant/injured for non-possession of driving license is contrary to the same. The issue is squarely covered by the decision of Apex Court held in Dinesh Kumar, J @ Dinesh J Vs.National Insurance Company



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Limited., reported in 2018-1-TNMAC-34(SC). By applying the ration, I find

that the fixation of 20% contributory negligence on the part of appellant/injured for non-possession of driving license is hereby set-aside.

8. On the point of quantum of compensation, at the time of accident, the claim petitioner was working as Tailor and taking note of the fact that the medical board has fixed disability at the rate of 10% as per Ex.C1 and by considering the nature of work the Tribunal taking notional income of Rs.9,000/- per month and adding 40% towards future and at the time of the accident, the claim petitioner was aged about 37 years and right multiplier of '15' has been applied by the Tribunal and awarded a sum of Rs.2,26,800/-. By considering year of accident and age of injured, I am inclined to fix a sum of Rs.12,000/- as notional income and the petitioner was taken as an inpatient treatment from 17.07.2017 to 25.07.2017 in MIOT hospital. Accordingly, the pecuniary loss sustained by the claim petitioner and other heads are re-assessed as follows:-

Loss of earning Power:

$$\text{Rs.12,000/-} + (\text{Rs.4800/-} + \text{Future prospects}) * 12 * 15 * 10\% = \text{Rs.3,02,400/-}$$



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No	Head	Amount awarded by the tribunal Rs.	Amount awarded by this Court Rs.
1	Loss of earning capacity	Rs.2,26,800/-	Rs.3,02,400/-
2	Medical Bills Ex.P5 Series	Rs. 22,785/-	Rs. 22,785/-
3	Pain & Suffering	Rs. 10,000/-	Rs. 20,000/-
4	Extra Nutrients	Rs. 10,000/-	Rs. 10,000/-
5	Transport Expenses	Rs. 5,000/-	Rs. 10,000/-
6	Attender charges	Rs. 3,600/-	Rs. 3,600/-
7	Damage to cloths	Rs. 1,000/-	Rs. 1,000/-
8	Loss of Amenities	Rs. 5,000/-	Rs. 10,000/-
9	Mental Agony	Rs. 5,000/-	Rs. 10,000/-
Total		Rs. 2,89,185/-	Rs.3,94,780/ -
20% contributory Negligence		Rs. 2,31,348/-	

9. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,31,348/- to Rs.3,94,780/-

(iii) The appellant/claimant is directed to pay the Court fee for the



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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/United India Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this Court 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.5327 of 2017 on the file of Motor Accident Claims Tribunal/IV Small Causes Court at Chennai, within a period of four 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 entire amount, in the manner known to law.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes/ No

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1. The Motor Accidents Claims Tribunal / IV Small Causes Court at
Chennai.

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

RMT.TEEKAA RAMAN, J.,
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