IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.No.3052 of 2019
and Cross Objection No.53 of 2019
and C.M.P.No.16712 of 2019

C.M.A.No.3052 of 2019:

Shriram General Insurance Co. Ltd.,
having its Branch Office at
VCTV Main Road, Sathy Road,
Erode – 638 003.

...Appellant

Versus

1.Ramani
2.S.Revathi

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the decree and judgment dated 23.10.2017 made in M.C.O.P.No.224 of 2015 on the file of Motor Accident Claims Tribunal (Special Sub Court), Erode.

For Appellant	:	Mr.S.Dhakshanamoorthy
For Respondent – 1	:	Mr.S.P.Yuvaraj
For Respondent – 2	:	No Appearance

Cross Objection No.53 of 2019:

Ramani ...Cross Objector

Versus

1.Shriram General Insurance Co. Ltd.,
having its Branch Office at
VCTV Main Road, Sathy Road,
Erode – 638 003.
2.S.Revathi

...Respondents

This Cross Objection is filed under Order 41 Rule 22 of C.P.C praying to enhance the compensation amount awarded in the judgment and decree dated 23.10.2017 made in M.C.O.P.No.224 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode by allowing this cross appeal in C.M.A.No.3052 of 2019 on the file of this Court.

For Cross Objector : Mr.S.P.Yuvaraj
For Respondent – 1 : Mr.S.Dhakshanamoorthy

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company questioning the liability fixed and quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Court), Erode, vide decree and judgment dated 23.10.2017 in M.C.O.P.No.224 of 2015. Subsequent to the filing of this appeal, the first respondent/claimant has filed a Cross Objection No.53 of 2019 seeking to enhance the compensation amount awarded by the Tribunal vide its decree and judgment dated 23.10.2017 made in M.C.O.P.No.224 of 2015.

2. The brief facts of the case are as follows:

On 13.01.2015 at about 8.50 a.m, when the first respondent was travelling as pillion rider in Honda Activa moped bearing Registration No.TN 33 BE 9657 which was riding by the second respondent on Chennimalai to Erode Main Road from West to East direction, near Erode Goods shed, in front of Public Toilet, one School Van came behind the moped blew horn. So, the second respondent suddenly came down from Thar Road to Mud Road and due to uncontrollable speed, she could not control the moped and thereby fell down with moped. Due to the accident, the first respondent had sustained grievous injuries and bone fracture on head. Hence, the first respondent had filed a Claim Petition in M.C.O.P.No.224 of 2015 against the second respondent and appellant/Insurance Company, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident.

3. The appellant/Insurance Company had filed its counter statement in M.C.O.P.No.224 of 2015 denying all the averments made by the first respondent/claimant in the claim petition.

4. Before the Tribunal, in order to prove the averments in the claim petition, the first respondent/claimant examined herself as P.W.1 and apart from her, three other witnesses were examined as P.W.2, P.W.3 & P.W.4 and 21 documents were marked as Exs.P1 to P21. On the side of the second respondent and appellant/Insurance Company, no witnesses were examined and no exhibits were marked.

5. On appreciation of the oral and documentary evidence, the Tribunal arrived at the finding that the accident occurred due to the second respondent who drove the two wheeler in a rash and negligent manner and the Tribunal also held that being the insurer of the offending vehicle viz., two wheeler driven and owned by the second respondent, the appellant/Insurance Company is liable to pay the compensation to the first respondent/claimant. By arriving at such a conclusion, the Tribunal had allowed the M.C.O.P.No.224 of 2015 and directed the appellant/Insurance Company to pay a sum of Rs.3,20,300/- (Rupees Three Lakhs Twenty Thousand and Three Hundred only) to the first respondent/claimant. The break-up details of the compensation awarded by the Tribunal are as follows:

(i) Loss of Income	-	Rs. 19,500/-
(ii) Transport Expenses	-	Rs. 4,000/-
(iii) Extra Nourishment	-	Rs. 9,000/-
(iv) Damages for clothes and Articles	-	Rs. 500/-
(v) Medical Expenses	-	Rs. 66,900/-
(vi) Pain and Sufferings	-	Rs. 40,000/-
(vii) Disability	-	Rs. 40,000/-
(viii) Loss of Earning Power	-	Rs.1,40,400/-
Total	-	Rs.3,19,300/-

The total compensation was rounded off to Rs.3,20,300/-.

6. Aggrieved over the liability fixed and quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has filed the present Appeal before this Court.

7. Mr.S.Dhakshanamoorthy, learned counsel for the appellant/Insurance Company submitted that when the second respondent was driving her two wheeler, a driver who was driving an unknown School Van behind her two wheeler suddenly blew horn, as a result of which, the second respondent lost her balance and fell down with two wheeler, thereby, the accident occurred. Hence, there was no negligence on the part of the second respondent.

7.1. In fact, in the First Information Report (Ex.P1), it has been clearly stated that the accident had occurred only due to the driver of an unknown School Van who blew horn suddenly. Since the first respondent/claimant had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, she ought to have proved that the negligence is on the part of the second respondent who drove the two wheeler, but, none of the documents marked on the side of the first respondent/claimant had not proved that the accident had occurred due to the negligent driving of the second respondent. However, without considering all these aspects, the Tribunal fastened the negligence on the second respondent. The Tribunal had observed in its findings that the school van which came behind the two wheeler driven by the second respondent not dashed behind the two wheeler, but, only about to dash the two wheeler and after hearing the horn sound of the school van, the first respondent driven away the two wheeler from Thar Road to Mud Road and she could not control the speed of the two wheeler and fell down, thereby the accident had occurred. It also observed that if the second respondent rode the two wheeler in a careful manner, the accident would not had been occurred. Ultimately, the Tribunal arrived at a conclusion that the accident had happened due to the rash and negligent driving of the second respondent who drove the two wheeler and being the insurer of the two wheeler, the appellant/Insurance Company is liable to pay the compensation to the first respondent/claimant.

7.2. The learned counsel further submitted that so far as quantum of compensation is concerned, the Tribunal had awarded Rs.40,000/- towards Disability and Rs.1,40,400/- towards Loss of Earning Power, which are on the higher side.

7.3. In the present case, Dr.Periyasamy (P.W.2) who examined the first respondent/claimant assessed that the first respondent/claimant is suffered from 46% of partial permanent disability. The disability certificate issued by P.W.2 was marked as Ex.P16. However, considering the medical reports of the first respondent/claimant, the Tribunal took the functional disability of the first respondent/claimant as 20% and awarded a sum of Rs.40,000/- towards Disability. That apart, considering the age, monthly income and functional disability, the Tribunal awarded a sum of Rs.1,40,400/- towards Loss of Earning Power respondent/claimant. The Tribunal ought not to have considered the disability of the first respondent/claimant twice while awarding compensation towards Disability and while awarding compensation towards Loss of Earning Power. Further, the Tribunal ought not to have applied the multiplier method while awarding compensation towards Loss of Earning Power because it already awarded Rs.40,000/- towards Disability by taking the functional disability as 20%.

7.4. The amount awarded towards Loss of Earning Power is on the higher side. Therefore, the learned counsel prayed this Court to re-determine the amount awarded towards Loss of Earning Power without applying the multiplier method. Further, he suggested this Court to take the percentage of Functional Disability of the first respondent/claimant as 30% and also, to enhance the amount for 1% disability as Rs.4,000/-.

8. Mr.S.P.Yuvaraj, learned counsel appearing for the first respondent submitted that at the time of accident, the first respondent/claimant was working as a House Maid and she was earning Rs.10,000/- per month. The first respondent/claimant is the only earning member in her family. Due to the accident, the first respondent/claimant sustained severe injuries all over her body and she is suffered from permanent disability. Though P.W.2 had assessed the disability of the first respondent/claimant as 46%, the Tribunal

took the disability of the first respondent/claimant as 20%. However, without considering all these aspects, the Tribunal awarded a very meager amount as compensation. Therefore, the learned counsel prayed this Court to enhance the compensation awarded by the Tribunal and dismiss the appeal filed by the appellant/Insurance Company.

9. Heard the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials placed before this Court.

10. In the present case, the appellant/Insurance Company has preferred this appeal questioning the liability fixed and compensation awarded by the Tribunal. On the other hand, the first respondent/claimant has filed a Cross Objection, for enhancement of compensation awarded by the Tribunal.

11. As far as negligence and liability are concerned, the Tribunal had rightly fixed the negligence on the shoulder of the second respondent and liability on the appellant/Insurance Company. Hence, this Court confirms the finding of the Tribunal in respect of fixation of negligence and liability.

12. So far as quantum of compensation awarded by the Tribunal is concerned, this Court accepts the submission made by the learned counsel for the appellant/Insurance Company that the Tribunal ought not to have considered the disability of the first respondent/claimant twice while awarding compensation towards Disability and while awarding compensation towards Loss of Earning Power. Hence, this Court feels that it would be just and appropriate to award compensation under a single head, 'Loss of Earning Power due to Disability' instead of re-determining the amount awarded under the heads viz., Disability and Loss of Earning Power. Further, as prayed by the learned counsel for the appellant/Insurance Company, this Court takes the percentage of Functional Disability of the first respondent/claimant as 30% and enhances the amount for 1% disability as Rs.4,000/-.

13. Accordingly, the two heads viz., Disability and Loss of Earning Power and the amounts awarded by the Tribunal therein are deleted and a sum of Rs.1,20,000/- (30 x Rs.4,000/-) is awarded under the head, 'Loss of Earning Power due to Disability'. The amount awarded by the Tribunal towards all other heads viz., Loss of Income, Transport Expenses, Extra

Nourishment, Damages for clothes and Articles, Medical Expenses, Pain and Suffering are just and fair and therefore, the same are not enhanced or reduced. The break-up details of the re-determined compensation awarded by this Court are as follows:

(i) Loss of Income	-	Rs. 19,500/-
(ii) Transport Expenses	-	Rs. 4,000/-
(iii) Extra Nourishment	-	Rs. 9,000/-
(iv) Damages for clothes and Articles	-	Rs. 500/-
(v) Medical Expenses	-	Rs. 66,900/-
(vi) Pain and Sufferings	-	Rs. 40,000/-
(vii) Loss of Earning Power due to Disability (30 x Rs.4,000/-)	-	Rs.1,20,000/-
Total	-	Rs.2,59,900/-

The total compensation is rounded off to Rs.2,60,000/-.

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the Cross Objection filed by the first respondent/claimant is dismissed. A sum of Rs.3,20,300/- (Rupees Three Lakhs Twenty Thousand and Three Hundred only) awarded by the Tribunal in M.C.O.P.No.224 of 2015 is re-determined to a sum of Rs.2,59,900/- which is rounded off as Rs.2,60,000/- (Rupees Two Lakhs and Sixty Thousand only) by this Court. The appellant/Insurance Company is directed to deposit the said re-determined

award amount, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of M.C.O.P.No.224 of 2015, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said award amount directly to the bank account of the first respondent/claimant, through RTGS, within a period of three weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

KRISHNAN RAMASAMY, J.

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