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C.M.A.No.1534 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1534 of 2024

Mallika

...Appellant

.Vs.

1.Shanmugarasu

2.The Branch Manager,
United India Insurance Company Limited,
Divisional Office : 171800, No.225,
TNA Complex, Salem Road,
Tiruchengode.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.06.2023 in M.C.O.P. 11 of 2020 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Paramathy.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.P.Sankaranarayanan



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JUDGMENT

The appellant is the claimant in M.C.O.P. 11 of 2020 on the file of the Motor Accidents Claims Tribunal, Paramathy. She filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the injuries sustained by her in a road accident that took place on 18.12.2019.

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

On 18.12.2019, the claimant was walking along Chithalandur – Solasiramani Main Road. When she was nearing Pannappalayam, a speeding motorcycle bearing Registration Number TN-88-Y-3837 belonging to the first respondent, hit her, as a result of which, she sustained injuries all over her body. She was immediately rushed to Surya Multi Speciality Hospital, Tiruchengode. After getting first aid, she got herself admitted in Ganga Medical Centre, Coimbatore, where she was treated as an inpatient for 15 days.



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3. According to the claimant, the rash and negligent riding of the rider of the two wheeler bearing Registration Number TN-88-Y-3837 belonging to the first respondent was the cause of the accident and that since the said two wheeler was insured with the second respondent, the United India Insurance Company Limited, the owner of the two wheeler (first respondent) and the insurer are jointly and severally liable to pay compensation to her.

4. In the Tribunal, the owner of the two wheeler remained absent and was set *ex parte*. The second respondent, the United India Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler since the rider of the two wheeler was in an inebriated condition at the time of accident. Therefore, the owner of the two wheeler was directed to pay the entire compensation of Rs.3,57,057/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realization,



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vide its orders dated 01.06.2023. The Tribunal dismissed the claim petition as against the second respondent.

6. Aggrieved over the quantum of compensation awarded by the Tribunal and challenging fastening of negligence on the part of the rider of the two wheeler, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.T.S.Arthanareeswaran, learned counsel for the appellant and Mr.P.Sankaranarayanan, learned counsel for the second respondent.

8. Mr.T.S.Arthanareeswaran, learned counsel for the appellant would contend that the Tribunal had awarded a meagre amount of Rs.3,57,057/- even though the claimant was hospitalised for more than 15 days. It is also his contention that the Tribunal had directed the owner of the two wheeler to pay the entire compensation on the ground that the rider of the two wheeler was in an inebriated condition at the time of riding his vehicle. According to him, there is no evidence to substantiate the same.



Therefore, he prayed for overall enhancement of the compensation.

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9. *Per contra*, Mr.P.Sankaranarayanan, learned counsel for the second respondent contended that the award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. A perusal of the records shows that the claimant was walking along on the left hand side of the road. The rider of the two wheeler hit her and on account of this, the claimant sustained injuries. In the Accident Register (Ex.P2) issued by Ganga Medical Centre and Hospitals Private Limited, Coimbatore, it is mentioned as 'Alleged history of RTA, Pedestrian vs a drunk two-wheeler' and except this piece of evidence, there is nothing on record to show that the rider of the two wheeler was in an inebriated condition at the time of riding his vehicle. Therefore, the Tribunal was wrong in directing the owner of the two wheeler to pay the entire compensation to the claimant. The Records also shows that the first respondent had insured his vehicle with the second respondent, the United



India Insurance Company Limited, as is seen from the policy of insurance.

It is not disputed that the first respondent had insured his vehicle with the second respondent Insurance Company. Therefore, the liability of the owner of the vehicle as well as the Insurance Company is joint and several.

11. The Medical Board attached to Government Hospital, Namakkal, has assessed the partial permanent disability of the claimant as 6%. The Tribunal has awarded Rs.5,000/- per percentage of disability since there was no functional disability. The disability certificate does not speak about functional disability. The age of the claimant was 50 years at the time of accident and the accident took place in the year 2019. Considering the same, awarding Rs.7,000/- per percentage would meet the ends of justice. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability	30,000/-	42,000/-
2.	Pain and sufferings	30,000/-	30,000/-



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
3.	Extra nourishment	25,000/-	25,000/-
4.	Loss of income	7,500/-	7,500/-
5.	Loss of amenities	20,000/-	20,000/-
6.	Attender's charges	15,000/-	15,000/-
7.	Damage to clothes	5,000/-	5,000/-
8.	Medical expenses	2,14,557/-	2,14,557/-
9.	Transportation charges	10,000/-	10,000/-
TOTAL		Rs.3,57,057/-	Rs.3,69,057/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,57,057/- to Rs.3,69,057/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.3,57,057/- to Rs.3,69,057/-.



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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 first and the second respondent, the United India Insurance Company Limited, are directed to deposit the enhanced compensation amount i.e., Rs.3,69,057/- (less the amount already deposited) jointly and severally, 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. 11 of 2020 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Paramathy, within a period of four weeks from the date of receipt of a copy of this order.

v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.



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vi. The appellant / claimant is not entitled to claim any interest for the period of delay of 156 days in filing this appeal.

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Index : Yes/No
Speaking / Non-speaking order
mtl

To

1. The Motor Accidents Claims Tribunal,
Subordinate Court, Paramathy

2.The Branch Manager,
United India Insurance Company Limited,
Divisional Office : 171800, No.225,
TNA Complex, Salem Road,
Tiruchengode.

3.The Section Officer, VR Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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