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CMA.No.2051 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2051 of 2024

Jothimani

.... Appellant

vs.

1. Mohanasundaram
2. Archana
3. The Reliance General Insurance Company Limited,
Reliance Centre South Wing, 4th Floor,
Off. Western Express Highway Santacruz,
East Mumbai, Maharashtra 400 055.
4. The Reliance General Insurance Company Limited
408, Sakthi Supermarket Building, 3rd Floor,
Perundurai Road, Erode District 638 011. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 05.09.2023 in M.C.O.P.137/2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

For Appellant	: Mr. T.S.Arthanareeswaran
R1 & R2	: Notice dispensed with.
For R3 & R4	: Mr.P.Suresh Srinivasan



CMA.No.2051 of 2024

JUDGMENT

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The appellant is the claimant in M.C.O.P.137/2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode, and she filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.30,00,000/- for the injuries sustained by her in a road accident that occurred on 13.06.2019.

2. The case of the claimant is that on 13.06.2019 she was walking along Sathy -Koodakkarai Road and at about 7.45 a.m., an Alto car bearing Registration Number TN-36-L-8271, belonging to the second respondent, came in the opposite direction and hit her as a result of which she fell down and sustained injuries all over her body. She was immediately rushed to the hospital.

2.1. According to the claimant, the rash and negligent driving of the driver of the Alto car bearing Registration Number TN-36-L-8271, was the cause of the accident and that since the said car was insured with the Reliance General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to her.



CMA.No.2051 of 2024

3. In the Tribunal the driver and the owner of the car remained absent and were set *ex parte*. The Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, held that the liability of the owner and the insurer are joint and several and that they should pay compensation of Rs.5,68,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 05.09.2023.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr. T.S.Arthanareeswaran, learned counsel for the appellant and Mr.P. Suresh Srinivasan, learned counsel for the third and fourth respondents Insurance Company.



7. Mr. T.S.Arthanareeswaran, learned counsel for the appellant

contended that Dr. Natesan (P.W.2), who gave treatment to the claimant, had issued a partial permanent disability certificate (Ex.P15) stating that the claimant has sustained partial permanent disability of 64%. However, the Tribunal had reduced it to 45% without any basis. His further contention is that the Tribunal has not awarded just compensation and therefore prayed for enhancement of compensation.

8. Per contra, Mr.P. Suresh Srinivasan, learned counsel appearing for the Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

9. The discharge summaries (Ex.P10 and Ex.P20) show that the claimant was admitted as an inpatient in LKM Hospital, Erode, from 13.06.2019 to 24.06.2019. He was once again hospitalised from 15.07.2019 to 01.08.2019 and an operation was performed on 18.07.2019 under General Anesthesia. The diagnosis mentioned in the Discharge



CMA.No.2051 of 2024

Summary (Ex.P10) is extracted hereunder.

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"Minimally displaced fracture Lt. Calcaneum.

Brust fracture L1vertebrae D7 and D8 wadge compression fracture.

Minimally displaced fracture distal 1/4th Ulna

MRI:

-Wedge compression fracture at L1 body with cord compression.

- Further wedge compression fractures D7 and D8 levels.

- left plueral effusion present."

Initially the claimant was not willing for a surgery and therefore managed with conservative treatment. Subsequently, she got herself admitted on 15.07.2019 and discharged on 01.08.2019 in the very same hospital.

9.1. It is pertinent to point out that the claimant did not appear before the Medical Board for assessing her disability. However, Dr.Natesan (P.W.2), who gave treatment, had assessed the partial permanent disability as 64%. The percentage of disability does not match with the injuries sustained by the claimant and therefore, the Tribunal was right in reducing the percentage of disability to 45%. The Tribunal has



CMA.No.2051 of 2024

awarded Rs.5,000/- per percentage of disability. Since the accident took place in the year 2019, awarding Rs.7,000/- per percentage would meet the ends of justice.

9.2. In the claim petition it is stated that the claimant was working as an agricultural labourer earning a sum of Rs.12,000/- per month. In the absence of income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.9,000/-. Considering the year of accident, this Court fixes the notional monthly income of the claimant as Rs.10,000/-. On account of the accident, the claimant would have been out of action atleast for four months. Hence a sum of Rs.40,000/- (Rs.10,000/- x 4) is awarded towards loss of earnings.

9.3. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of Earnings	36,000/- (Rs.9,000/- x 4)	40,000/- (Rs.10,000/- x 4)
2.	Transportation charges	10,000/-	10,000/-
3.	Extra nourishment	15,000/-	15,000/-
4.	Attender charges	15,000/-	15,000/-
5.	Future Medical Expenses	10,000/-	10,000/-
6.	Damages to clothes and articles	5,000/-	5,000/-
7.	Medical expenses	2,02,000/-	2,02,000/-
8.	Pain and sufferings	50,000/-	50,000/-
9.	Permanent disability and loss of earning power	2,25,000/- (R.5,000/- x 45)	3,15,000/- (Rs.7000/- x 45)
	Total	5,68,000/-	6,62,000/-

9.4. Thus, the compensation awarded by the Tribunal is enhanced from Rs.5,68,000/- to Rs.6,62,000/-. As regards interest, the claimant is entitled to get 7.5% per annum for Rs.6,52,000/- and no interest is granted for future medical expenses of Rs.10,000/-.



CMA.No.2051 of 2024

WEB COPY

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.5,68,000/- to Rs.6,62,000/-.
- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The third and fourth respondents, Reliance General Insurance Company Limited, Mumbai and Erode, respectively, are directed to deposit the enhanced compensation amount of Rs.6,62,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum on Rs.6,52,000/- from the date of claim petition till the date of deposit to the credit of M.C.O.P.137 / 2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode, within a period of four weeks from the date of receipt



CMA.No.2051 of 2024

of a copy of this order.

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

vi. The appellant/claimant is not entitled to claim any interest for the period of delay of 154 days in filing this appeal, as per the orders of this Court dated 18.07.2024 in C.M.P. No.11802 of 2024.

09.09.2024

Index : Yes/No

Speaking/Non-speaking order

bga

To

1. Motor Accident Claims Tribunal, Special Subordinate Court, Erode.
2. The Reliance General Insurance Company Limited,
Reliance Centre South Wing, 4th Floor,
Off. Western Express Highway Santacruz,
East Mumbai, Maharashtra 400 055.
3. The Reliance General Insurance Company Limited
408, Sakthi Supermarket Building, 3rd Floor,
Perundurai Road, Erode District 638 011.
4. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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