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CMA.No.1848 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.1848 of 2023
& CMP.No.17884 of 2023

The Branch Manager,
The Oriental Insurance Company Limited.,
No.32/312, 13th Street,
1st Floor, Vijayalashmi Complex,
Phase-II, Sathuvachari,
Vellore District.

... Appellant

-Vs-

1.Lokeswari
2.Bhavani

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.54 of 2022 dated 19.04.2023 on the file of the learned Motor Accident Claims Tribunal (Special Sub Court) Tirupattur.

For Appellant	: Mr.J.Chandran
For R1	: Mr.K.Myilsamy
For R2	: set ex-parte vide order dt. 27.10.23



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JUDGMENT

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2.On 24.11.2021, at 12.30 p.m when the claimant was going back to her home in her cycle, near Jolarpettai, S.Kodiur Government Hospital, a lorry bearing Regn.No.TN 28 AR 1059, which was driven by its driver in a rash and negligent manner, hit against the claimant. In the accident, the tyre of the lorry ran over the left leg of the claimant, below the knee, due to which she suffered a crush injury and fracture. For the injuries sustained by the claimant in the accident, she preferred MCOP.No.54 of 2022 before the Motor Accident Claims Tribunal(Special Sub Court), Tirupattur claiming a sum of Rs.50,00,000/- as compensation.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent vehicle and directed the



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second respondent-Insurance Company to pay a sum of **Rs.16,71,697/-** as compensation to the claimant. Challenging the fixation of negligence against the driver of the 1st respondent lorry and fastening the liability against the appellant/insurance company and also the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has filed the present appeal.

4.The learned counsel for the appellant insurance company submitted that in Ext.P4, discharge summary it was recorded that the accident occurred due to sudden fall due to skit. This aspect was not taken into consideration by the Tribunal and the entire negligence was fixed against the driver of the first respondent Lorry. Therefore, he submitted that fixing the entire negligence on the driver of the Lorry is unjustifiable and sought to redetermine the same.

5.With regard to the quantum of compensation awarded by the Tribunal, the learned counsel for the appellant submitted that 50% was taken as future prospects while determining Rs.9,000/-, as the notional income of the deceased, which is on the higher side. Further, the



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disability of the claimant was determined at 50% by the Doctor who examined the claimant, which is on the higher side, since the claimant only suffered a fracture in the leg. Hence, he requested to redetermine the compensation awarded by the Tribunal.

6.On the other hand, the learned counsel appearing for the first respondent/claimant submitted that in Ext.P2, wound certificate it has been recorded that the accident occurred when the injured claimant was hit by the Lorry. Further, the injured claimant as PW1 has deposed that only due to the rash and negligent driving on the part of the driver of the Lorry, the accident had occurred. Therefore, he would submit that the accident occurred due to the negligence on the part of the driver of the Lorry. As regards the quantum of compensation awarded by the Tribunal, he would submit that the compensation awarded by the Tribunal is just and fair and that the same may be confirmed.

7.Considered the submissions of the learned counsel for the appellant and the first respondent and perused the materials placed on record.



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8.On a perusal of the documents placed on record, it is seen that the appellant/insurance company has not produced any oral or documentary evidence to prove that the accident occurred not due to the rash and negligent driving on the part of the driver of the Lorry. Therefore, the Tribunal had rightly come to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the Lorry. This Court does not find any infirmity in the conclusion arrived by the Tribunal with regard to fixation of negligence against the driver of the lorry and fastening the liability against the appellant/Insurance Company and the same stands confirmed.

9.As regards the quantum of compensation awarded by the Tribunal, the Hon'ble Supreme Court in *National Insurance Co. Ltd Vs. Pranay Sethi & Others* [(2017) 16 SCC 378], had held that 40% has to be added to the notional income towards the future prospects when the victim of the accident is self employed and is less than 40 years of age. In the instant case, the claimant was 28 years old at the time of the accident and was harvesting milk from cows and vending milk. Therefore, the



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Tribunal ought not to have awarded 50% towards future prospects, when it fixed the notional income at Rs.9,000. In view of the above, this Court is now inclined to reduce the future prospects to 40% instead of 50% as was awarded by the Tribunal. Accordingly, the compensation awarded towards disability is redetermined as below;

$$9,000 + 3,600 (40\%) = 12,600$$

$$12,600 \times 12 \times 17 \times 50/100 = 12,85,200/-$$

10.The compensation awarded by the Tribunal under other heads of compensation is just and reasonable and the same stands confirmed. Accordingly, the Award of the Tribunal is redetermined as below;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability (50%)	13,77,000/-	12,85,200/- -	Reduced
2.	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
3.	Transportation Expenses	24,000/-	24,000/-	Confirmed



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4.	Atender charges	15,000/-	15,000/-	Confirmed
5.	Extra Nourishment	30,000/-	30,000/-	Confirmed
6.	Medical Expenses	1,25,697/-	1,25,697/-	Confirmed
	Grand Total	16,71,697/-	15,79,897/- - Rounded off to 15,80,000/- -	Reduced by 91,800/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,71,697/- is hereby reduced to Rs.15,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of *six weeks* from the date of receipt of a copy of this judgment to the credit of **MCOP.No. 54 of 2022** on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tirupattur. On such deposit being made, the Tribunal is directed to transfer the Award amount, directly to the Bank account of the Claimant/first respondent through RTGS, within



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a period of **three weeks**. No costs. Consequently, the connected miscellaneous petition is closed.

20.02.2024

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To

- 1.The Motor Accidents Claims Tribunal,
Special Sub Court, Tirupattur.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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KRISHNAN RAMASAMY, J.,

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