



C.M.A.No.2665 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2665 of 2023

Mangailakshmi

... Appellant/Petitioner

Vs.

1. Sarathi

2. New India Assurance Company Limited,
Third Party Claims HUB,
No.1, CSI Building, 2nd Floor,
Officer's Line Vellore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 28.06.2023 and made in M.A.C.T.O.P.No.226/2017 on the file of the Motor Accident Claims Tribunal and Sub Ordinate Judge, Vaniyambadi, Thirupathur District.

For Appellant : Ms.A.Subadra

For R1 : Dispensed with

For R2 : Ms.A.Salomi



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the claimant, challenging both the liability and quantum of compensation awarded by the Motor Accidents Claims Tribunal, Sub Ordinate Judge in MACT.O.P.No.226 of 2017 dated 28.06.2023.

2. On 03.10.2017 at about 11.00 a.m., when the injured/claimant was travelling as a pillion on a two wheeler, bearing Reg.No.TN 23 BM 2178, at that time, near Thimmampettai Police Station at Thimmampettai Village, the Mahindra Xylo Car bearing Reg.No.TN 09 BA 2555, which was driven in a rash and negligent manner and hit behind the claimant. Due to said accident, the claimant sustained grievous injures on her head, left knee, left shoulder and all over her body. Thereafter, the claimant have filed a claim petition before the Tribunal, claiming a compensation of Rs.10,00,000/-.

3. The learned counsel for the appellant submitted that, as far as the liability is concerned, the Tribunal has fixed contributory negligence at 20% on the part of the rider of the two wheeler. Since the rider of the two wheeler failed to produce the driving licence as proof to show that he was in possession of



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same and merely not wearing helmet at the time of the accident, the Tribunal had fixed contributory negligence at 20%, and determined that was the cause for the accident occurred. Further, she contended that the cause of accident occurred on the part of driver of the car, which was driven in a rash and negligent manner. Therefore, the learned counsel submitted that the findings rendered by the Tribunal fixing 20% contributory negligence on the part of the rider of the two wheeler has to be set aside.

3.1. It is also the grievance of the learned counsel that even the quantum of compensation awarded by the Tribunal under various heads is on the lower side and hence, prayed for awarding just and fair compensation.

4. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, the rider of the two wheeler did not wear helmet at the time of accident and also not possessing the driving licence. Hence, the Tribunal has rightly fixed 20% contributory negligence against the rider of the two wheeler and the same requires no interference. Further, the learned counsel submitted that even the quantum of compensation awarded by the Tribunal under various heads is just and fair.



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5. Heard the learned counsel for the appellant and the learned counsel on behalf of the second respondent and perused the materials available on record.

6. In the present case, no doubt, the Tribunal based on the oral evidence of the eye-witness, has come to the conclusion, that the cause of the accident was due to rash and negligence on the part of the rider of the car. However, the Tribunal fastened 20% contributory negligence on the rider of the two wheeler, for mere reason that the rider of the two wheeler was not wearing helmet and failed to produce a driving licence so as to prove that he was a holder of the driving licence at the time of the accident. While determining the negligence aspect, the Tribunal has to find out as to whose negligence has resulted in the accident, but in the present case, the Tribunal fixed 25% contributory negligence on the part of the rider of the two wheeler, for not possessing driving licence and not wearing helmet, is not proper and the same is set-aside.

7. As far as the quantum of compensation is concerned, the Tribunal ought to have adopt multiplier method for awarding compensation. However, in the present case, the Tribunal applied percentage method towards permanent disability at 30% and awarded compensation at Rs.1,50,000/-, which appears to be low. Therefore, this Court is inclined to award a sum of Rs.6,000/- per



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percentage. Accordingly, the amount under the head of “permanent disability” is

modified at Rs.1,80,000/-. It is claimed by the appellant that though the injured was aged about 39 years was doing business and earning not less than Rs.10,000/- as his monthly income, without considering the same, the Tribunal had erroneously fixed the notional income at Rs.7,000/- per month. This Court feels it appropriate to re-determine the notional income of the injured as Rs.12,000/- per month and considering the nature of injuries sustained by the claimant, she was unable to do her work well for treatment period of 6 months, thereby, the loss of earning to the family is arrived at $\text{Rs.12,000/-} \times 6 = \text{Rs.72,000/-}$.

8. Consequently, a sum of **Rs.21,000/-** awarded by the Tribunal under the head of 'Loss of income' is hereby modified and enhanced to **Rs.72,000/-**. No amount has been awarded under the head of “future medical expenses”, therefore, this Court is inclined to award a sum of Rs.25,000/- towards “future medical expenses”. A sum of Rs.15,000/- awarded under the head of pain and sufferings, is on the lower side, and the same is enhanced and modified at Rs.30,000/-. The amount awarded by the Tribunal under other heads are just and fair and stands confirmed.



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9. Accordingly, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income	21,000/-	72,000/- (enhanced)
Transportation	5,000/-	5,000/-
Extra nourishments	10,000/-	10,000/-
Pain and sufferings	15,000/-	30,000/-
Medical expenses	80,974/-	80,974/-
Permanent disability	1,50,000/-	1,80,000/-
Future medical expenses	Nil	25,000/- (awarded)
Total	2,81,974/-	4,02,974/-

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from Rs.2,81,974/- to Rs.4,02,974/-. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.226/2017 along with interest from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of six



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weeks from the date of receipt of a copy of this judgment. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimants. No costs.

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Index : Yes / No
NCC : Yes / No
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To

1. The Motor Accident Claims Tribunal,
Sub Ordinate Judge, Vaniyambadi,
Thirupathur District.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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