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CMA.No.561 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.561 of 2023 &
C.M.P. No.4817 of 2023

Managing Director,
Oriental Insurance Company Limited,
1st Floor, Gopalrao Library Building,
Kumbakonam Town Hall Road,
Thanjavur District.

.... Appellant

vs.

1. R. Amutha

2. Proprietor Sri Balaji Agencies
Door No.38/A
Keezhamel Rukmanipalaiyam Road,
Mannargudi Taluk, Thiruvarur District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 11.08.2022 in M.C.O.P.28/2019 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Tiruvarur.

For Appellant : Mr. D. Bhaskaran

For R1 : Mr.P. Dinesh Kumar

R2 : No appearance.



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JUDGMENT

The appellant, the Oriental Insurance Company Limited, Thanjavur, filed the present appeal questioning the quantum of compensation awarded by the Tribunal in M.C.O.P.28/2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tiruvarur.

2. The first respondent filed a claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the injuries sustained by her in a road accident that occurred on 09.06.2014.

3. The case of the claimant is that on 09.06.2014 she was travelling as a pillion rider in a motorcycle bearing Registration Number TN-51-AB-162 on Thiruvarur-Mayiladuthurai Road and at about 5.30 p.m, a Tanker lorry bearing Registration Number TN-50-U-1516, belonging to the first respondent, came in the opposite direction and hit



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the motorcycle as a result of which she fell down and sustained injuries all over her body.

3.1. According to the claimant, the rash and negligent driving of the driver of the Tanker lorry bearing Registration Number TN-50-U-1516, was the cause of the accident and that since the said lorry was insured with the second respondent, the Oriental Insurance Company, Kumbakonam, the owner and the insurer are jointly and severally liable to pay compensation to her.

4. In the Tribunal the first respondent, the owner of the lorry, remained absent and was set *ex parte*. The second respondent Insurance Company resisted 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, fixed 10% contributory negligence on the part of the claimant and directed the second respondent Insurance Company to pay compensation of Rs.17,44,920/- to the appellant/claimant together with interest at the rate



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of 7.5% per annum from the date of the petition till the date of realisation,
vide its orders dated 11.08.2022.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal is filed by the appellant / Oriental Insurance Company Limited.

7. Heard Mr. D. Bhaskaran, learned counsel for the appellant and Mr.P. Dinesh Kumar, learned counsel for the first respondent/claimant.

8. Mr. D. Bhaskaran, learned counsel for the appellant Insurance Company contended that the claimant sustained femur fracture and the Tribunal, without any basis, had adopted multiplier method especially when there is no functional disability. He also drew the attention of this Court to the medical bills (Ex.P10) filed by the claimant and contended that the Tribunal had awarded the entire amount mentioned in the medical bills even without verifying the same. He therefore, prayed for scaling down the compensation awarded by the Tribunal.



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9. Per contra, Mr.P. Dinesh Kumar, learned counsel appearing for the first respondent/claimant contended that the Tribunal had properly analysed the evidence on record before awarding compensation of Rs.17,44,920/- and therefore, the same need not be disturbed in the present appeal.

10. At the outset it may be observed that the claimant had not filed the Discharge Summary issued by Meenakshi Hospital, Thanjavur, where she allegedly took treatment. In the wound certificate (Ex.P5), the following injuries are mentioned.

"1. Abrasion over lower anterior abdominal wall.

2. Left Labia Majora contusion

3. Internal degloving injury left thigh

4. Closed segmental fracture right femur."

As per the disability certificate (Ex.C1) issued by the Medical Board



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attached to Government Thiruvavur Medical College Hospital, Thiruvavur,

the claimant has sustained 40% partial permanent disability. There is no functional disability as far as the present case is concerned warranting multiplier method. However, the Tribunal had adopted multiplier method without any basis, and awarded a sum of Rs.16,12,800/- towards 'loss of earning power', which is totally wrong. Since the accident took place in the year 2014, a sum of Rs.2,00,000/- is awarded towards partial permanent disability by awarding a sum of Rs.5,000/- per percentage of disability.

10.1. It is seen from the records that the claimant was aged 33 years during the accident period. According to the claimant, she was a tailor by profession earning a sum of Rs.15,000/- per month. However, she did not adduce any documentary evidence to substantiate the same. In the circumstances, the notional monthly income of the claimant is fixed as Rs.6,000/- and on account of the accident, the claimant would have been out of action atleast for three months. Hence a sum of Rs.18,000/- (Rs.6,000/- x 3) is awarded towards loss of earnings.



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10.2. The Tribunal had fastened 10% contributory negligence on the part of the claimant. A perusal of the records shows that the driver of the lorry bearing Registration Number TN-50-U-1516 was the wrong doer. The claimant is only a pillion rider and there is absolutely no evidence to show that she contributed to the accident. In the circumstances, 10% of contributory negligence fastened on the part of the claimant is set aside.

10.3. It is pertinent to point out that the claimant has not filed the discharge summary issued by Meenakshi Hospital, Thanjavur, to show the treatment given to her and also the period of hospitalisation. The claimant has purchased several medicines without prescription. In the circumstances, a consolidated sum of Rs.1,00,000/- is awarded towards medical expenses.

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



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Loss of earning power	16,12,800/-	-
2.	Partial permanent disability	-	2,00,000/-
3.	Pain and sufferings	80,000/-	50,000/-
4.	Extra nourishment	10,000/-	10,000/-
5.	Transportation charges	2,000/-	2,000/-
6.	Attender charges	6,000/-	6,000/-
7.	Medical expenses	2,17,000/-	1,00,000/-
8.	Damages to cloths	1,000/-	1,000/-
9.	Loss of amenities	10,000/-	10,000/-
10.	Loss of Income	-	18,000/- (6000x3)
		19,38,800/-	3,97,000/-
	Less 10% contributory negligence	1,93,880/-	-
	Total	17,44,920/-	3,97,000/-

10.5. Thus, the compensation awarded by the Tribunal is scaled down to Rs.3,97,000/- from Rs.17,44,920/- which would carry interest at



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the rate of 7.5% per annum.

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11. In the result,

I. The Civil Miscellaneous Appeal is allowed. No costs.

Consequently connected miscellaneous petition is closed.

II. The orders passed by the Tribunal fixing contributory negligence on the part of the claimant to the extent of 10% is set aside.

III. The quantum of compensation awarded by the Tribunal is scaled down to Rs.3,97,000/- from Rs.17,44,920/-.

IV. The appellant/Insurance company is directed to deposit a sum of Rs.3,97,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The appellant is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.



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V. On such deposit being made by the appellant/Insurance Company, the first respondent/claimant is at liberty to withdraw the entire award amount, after following necessary procedures.

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Index : Yes/No

Speaking/Non-speaking order

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To

1. Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Tiruvarur.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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