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CMA.No.2155 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE. R.HEMALATHA

C.M.A.No.2155 of 2024

E.Pushpalatha

... Appellant

Vs.

1. A.Jayalakshmi

2. National Insurance Company Limited,

having its office branch I at

No.45, Feet Road, Above Menaka Cars, Pondicherry

and Branch Office at

No.661, Trunk Road, Poonamallee,

Chennai - 600 056.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 14.03.2023 in M.C.O.P.408 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.



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For Appellant : Mr.K.Varadha Kamaraj
For R2 : Mr.M.Krishnamoorthy

JUDGMENT

The appellant is the claimant in M.C.O.P.408 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee. She filed the above said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.5,00,000/- for the injuries sustained by her in a road accident that took place on 11.02.2014.

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

On 11.02.2014, the claimant was travelling as a pillion rider in a motorcycle bearing Registration No.TN-49-AD-5484 on Thanjavur - Kumbakonam Main Road. When she was nearing NH Nursery, a speeding Mahindra & Mahindra Van bearing Registration Number TN-32-X-6665 came in the opposite direction and hit the two wheeler, as a result of which, she fell down and sustained injuries all over her body. She was immediately rushed to Government Medical College Hospital, Thanjavur. After getting first aid in the said hospital, she got herself admitted in a



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private hospital for further treatment.

2.1. According to the claimant, the rash and negligent driving of the driver of the van bearing Registration Number TN-32-X-6665 was the cause of accident and that since the said vehicle was insured with the second respondent, the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the owner of the van remained absent and was set *exparte*. The second respondent, the National Insurance Company Limited resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4.The Tribunal, vide its orders dated 14.03.2023, fastened negligence on the part of the driver of the van bearing Registration Number TN-32-X-6665 and the claimant in the ratio 95:5 and directed the second respondent to pay compensation of Rs.1,28,087/- (95% of the total compensation of Rs.1,34,828/-) to the appellant (claimant) together with interest at the rate of 7.5% per annum from the date of the petition till the



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date of realisation. The Tribunal also held that the liability of the respondents are joint and several.

5. Aggrieved over the orders passed by the Tribunal, the appellant (claimant) has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent.

7. Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. He therefore, prayed for enhancement of compensation.

8. Per contra Mr.M.Krishnamoorthy, learned counsel appearing



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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.

Negligence

9. The Tribunal had fastened 5% of contributory negligence on the part of the claimant since three persons were travelling in the two wheeler as against the seating capacity. However, there is nothing on record to show that the rider of the two wheeler also contributed to the accident. Moreover, the claimant was only a pillion rider and in the circumstances the order of the Tribunal fastening 5% of contributory negligence on the part of the claimant (pillion rider) is erroneous and hence, set aside.

Quantum



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10. It is seen from the records that the claimant was aged 38 years on the date of accident. According to her, she was engaged in the business of selling sarees. She sustained a fracture in her hip. The Medical Board attached to Government Medical College Hospital, Thanjavur, has assessed the partial permanent disability of the claimant as 16%. Since there is no functional disability, the Tribunal fixed a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.48,000/- towards partial permanent disability. Considering the age of the claimant and the year of accident, a sum of Rs.4,000/- per percentage of disability is awarded. Hence, a sum of Rs.64,000/-(16 x 4000) is awarded towards partial permanent disability. The Award passed by the Tribunal under the other heads are more than sufficient and therefore, the same is confirmed.

10.1. 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.	Transportation	10,000/-	10,000/-



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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>
2.	Extra nourishment	10,000/-	10,000/-
3.	Damages to clothes	1,000/-	1,000/-
4.	Attender charges	3,000/-	3,000/-
5.	Pain and sufferings	15,000/-	15,000/-
6.	Loss of amenities	20,000/-	20,000/-
7.	Partial permanent disability	48,000/-	64,000/-
8.	Loss of income	15,000/-	15,000/-
9.	Medical Expenses	12,828/-	12,828/-
TOTAL		Rs.1,34,828/- (after deducting 5% contributory negligence 1,28,087/-)	Rs.1,50,828/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.1,50,828/- that would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The orders passed by Tribunal fixing contributory negligence on the



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part of the claimant is set aside.

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- iii. The compensation awarded by the Tribunal is enhanced to Rs.1,50,828/-.
- iv. 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 receipt of Court fee.
- v. The second respondent, the National Insurance Company Limited, is directed to deposit the enhanced compensation amount, i.e., Rs.1,50,828/- (less the amount already deposited) 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.408 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order.
- vi. On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.
- vii. The appellant / claimant is not entitled to claim interest for the



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period of delay of 54 days in filing this appeal.

15.10.2024

(2/2)

Index:Yes/No

Speaking/non Speaking order

Neutral Case citation: yes/no

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To

9/11

<https://www.mhc.tn.gov.in/judis>



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1. The Motor Accident Claims Tribunal,
II Additional District and Sessions Court, Tiruvallur at Poonamallee,
2. National Insurance Company Limited,
having its office branch I at
No.45, Feet Road, Above Menaka Cars, Pondicherry
and Branch Office at
No.661, Trunk Road, Poonamallee,
Chennai - 600 056.
3. The Section Officer, V.R. Section, High Court, Madras.

R.HEMALATHA, J



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