IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2832 of 2023

P.Bharathi
D/o.Parasuraman ... Appellant

Vs.

1.S.Suresh
S/o.Sekar

2.The Manager,
ICICI Lombard General Insurance, Co. Ltd.,
2nd Floor, No.140,
Nungambakkam High Road,
Chennai-600 034. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the compensation in M.C.O.P.250 of 2014, dated 12.06.2023, on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

For Appellant : M/s.Ramya V.Rao

For R2 : M/s.C.Bhuvana Sundari

For R1 : Dispensed with

JUDGMENT

The appellant has filed this appeal to enhance the compensation in M.C.O.P.250 of 2014, dated 12.06.2023, on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

2. The brief facts of the case of the appellant/claimant are as follows: On 25.05.2013 at about 08.30 hrs, the appellant was travelling as a pillion rider on a motorcycle bearing Registration No. TN 02 AW 5288 at Mayar Ramanathan Salai, near Koovam River, opposite to Chetpet Playground. At that time, the rider of the motorcycle drove the vehicle in a rash and negligent manner, endangering public safety, and hit the side body of an unknown motorcycle. Therefore, the 1st respondent, being the legal representative of the owner, and the 2nd respondent, the insurer of the offending vehicle, are jointly, severally, vicariously, and statutorily liable to pay compensation.

3. Challenging the dismissal order passed by the Tribunal, the claimant has preferred this appeal. Before the Tribunal, the appellant filed M.C.O.P. No. 250 of 2014, claiming compensation for injuries sustained

in the accident that occurred on 25.05.2013. On the side of the claimant/petitioner, P.W.1 and P.W.2 were examined, and Exs.P1 to P18 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined, and Exs.R1 to R3 were marked.

4. The learned counsel for the 2nd respondent raised objections stating that, as per the FIR, on the date of the alleged accident, the claimant was a pillion rider on a two-wheeler belonging to the 1st respondent and insured with the 2nd respondent. The FIR further states that the said vehicle was kicked by an unknown vehicle, causing the claimant to fall. Therefore, there was no fault on the part of the rider of the two-wheeler belonging to the 1st respondent, and hence, the insurance company raised objections.

5. After considering both oral and documentary evidence, the learned Trial Judge held that as per the FIR, the two-wheeler driven by the 1st respondent was kicked by an unknown vehicle. Therefore, negligence on the part of the 1st respondent was not proved, and the petition was dismissed. Challenging the said finding, the claimant has

preferred this appeal.

6. The learned counsel for the appellant/claimant argued that P.W.2 was examined as an eyewitness and deposed that the claimant fell due to the negligent riding of the two-wheeler belonging to the 1st respondent. However, the Tribunal relied solely on the FIR, which is not conclusive or an encyclopedia. The Tribunal failed to consider other crucial aspects, including the fact that the claimant underwent treatment for 41 days in the hospital and incurred medical expenses of over Rs.6,00,000/- due to the grievous injuries sustained. Without taking these facts into account, the Tribunal erroneously dismissed the claim petition. Hence, the findings are liable to be set aside.

7. Upon considering the submissions of both sides, it is evident that on the date of the accident, the claimant was a pillion rider on the motorcycle belonging to the 1st respondent. Admittedly, the claimant is the uncle's daughter of the rider. The FIR was lodged by the rider (1st respondent) immediately after the accident, stating that the two-wheeler was kicked by an unknown vehicle. However, P.W.2, claiming to be an

eyewitness, stated that the accident occurred due to the rash and negligent riding of the motorcycle by the 1st respondent. The claimant was taken to the hospital in an auto-rickshaw and admitted for treatment. The Accident Register also mentions that she was a pillion rider and was hit by another vehicle. However, as rightly pointed out by the claimant's counsel, it is highly unlikely that the rider (being a relative) would lodge a complaint against himself. Hence, he might have attributed the accident to an unknown vehicle.

8. To support his argument, the learned counsel relied on the judgment of this Court in CMA No. 3168 of 2017, where it was held that if negligence on the part of the rider is established, the insurance company (2nd respondent) is liable to pay compensation. In the present case, P.W.2 clearly deposed that the accident was due to the negligent act of the rider of the two-wheeler belonging to the 1st respondent. No contrary evidence was adduced by the 2nd respondent to disprove this. Furthermore, as the rider is a close relative of the injured, it is quite possible that he did not wish to implicate himself. Hence, the evidence of P.W.2 is sufficient to establish the negligent act of the 1st respondent. The learned Trial Judge

failed to consider this crucial aspect, warranting interference. Accordingly, the findings of the Tribunal are set aside.

9. On considering the submissions of both sides and upon perusal of the records, this Court is inclined to award compensation to the injured / appellant. The accident occurred in the year 2013. At the time, the injured/claimant was 22 years old. Though there was no documentary evidence of income, she claimed to be employed in a telecom company. Her salary slip was marked as Ex.P9, and her ID card with Employee Code 01A was marked as Ex.P10. However, in the absence of full proof, her notional income is reasonably fixed at Rs.10,000/- per month.

10. The Medical Board Disability Certificate is marked as Ex.C1. She was admitted to the hospital for 41 days. For pain and suffering, compensation is fixed at Rs.10,000 × 5 months = Rs.50,000/-. She produced medical bills marked as Exs.P7 and P8.

11. The learned counsel for the respondent argued that receipts

were not produced to prove payment of the entire medical bill. However, a perusal of Ex.P7 shows that an advance of Rs.3,72,000/- was paid in cash and Rs.10,000/- was paid via credit card, totaling Rs.3,82,000/- at the time of admission. The claimant was hospitalized from 25.05.2013 to 01.07.2013. Hence, the medical expenses are substantiated. Additionally, medicines purchased from Billroth Pharmacy amounted to Rs.2,68,800/-. Medical Bill totally Rs.6,50,800/- (Rs.3,82,000 + 2,68,800 = 6,50,800) For attendant charges, Rs.30,000/- is awarded. However, considering the nature of injuries, this Court is inclined to fix disability at 20% and awarded Rs.5,000/- per percentage. Accordingly, a sum of Rs. 1,00,000/- (Rs. 5,000 x 20%) is awarded towards partial permanent disability. Considering the disability, monthly income of Rs.10,000/- is accepted. Loss of income for 8 months is calculated as Rs.10,000 × 8 = Rs.80,000/-. For pain and suffering, Rs.50,000/- is awarded. For loss of amenities, Rs.20,000/- is granted. For Nutrition Rs.15,000/- is awarded and for Transportation Rs.10,000/- is awarded.

12. The following tabular column would show the amount awarded

by this Court under various heads.

Sl.No	*Heads*	*Amount in Rs.*
1	Partial disability (20% x 5000)	1,00,000
2	Loss of Income (10,000 x 8)	80,000
3	Attender Charges	30,000
4	Medical Bills	6,50,800
5	Loss of amenities	20,000
6	Pain and sufferings	50,000
7	Loss of Nutrition	15,000
8	Transportation Charges	10,000
	Total	**9,55,800**

Thus, the claimant is entitled to a sum of **Rs.9,55,800**/-. This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Since the vehicle was insured with the 2nd respondent, the insurance company is liable to pay the compensation.

13. In the result,

i) The appeal is allowed. There shall be no order as to costs.

ii) The appellant/claimant is directed to pay the necessary court fee for the compensation amount, within a period of two weeks and the Registry is directed to draft the decree, after receipt of necessary court fee.

(iii) The 2nd respondent, ICICI Lombard General Insurance, Co. Ltd., Chennai, is directed to deposit the compensation amount of Rs.**9,55,800**/- along with interest at the rate of 7.5% per annum, from the date of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.250 of 2014 on the file of the Motor Accident Claims Tribunal /II Court of Small Causes, Chennai.

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

12.06.2025

Index:Yes/No
Speaking/non Speaking order
Neutral Case citation: yes/no
rri

To

1. The Motor Accident Claims Tribunal, Chennai
   (II Court of Small Causes, Chennai.)

2.The Manager,
ICICI Lombard General Insurance, Co. Ltd.,
2nd Floor, No.140,
Nungambakkam High Road,
Chennai-600 034.

3.The Section Officer, V.R. Section,
High Court, Madras.

T.V.THAMILSELVI, J.

rri

C.M.A.No.2832 of 2023

12.06.2025