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C.M.A.No.37 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.37 of 2025

Sulochana

... Appellant / Petitioner

Vs.

1.Pushparaj

2.Reliance General Insurance Company Limited,
No.6, Haddows Road, 6th Floor,
Nungambakkam, Chennai-600 034.
Now Present address
Reliance General Insurance Company Limited,
Building Nos.10 & 11, Chennai City Centre,
No.13, 5th Floor, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.03.2024 made in M.C.O.P.No.168 of 2022 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee, Thiruvallur District.



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For Appellant : Mr.M.Sivakumar

For R2 : Mr.P.Suresh Srinivasan

J U D G M E N T

The appellant / claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Principal Subordinate Court, Poonamallee, Thiruvallur District, in M.C.O.P.No.168 of 2022, dated 11.03.2024, has filed this appeal.

2. On 01.06.2022 at about 05.30 a.m., when the claimant was riding her motorcycle bearing Reg.No.TN 10 AF 3531 on Poonamallee to Mount Trunk Road from west to east, a Tata Dost Van bearing Reg.No.TN 19 AW 8586 belonging to the first respondent was driven by himself in a rash and negligent manner and came in the same direction and hit the claimant's motorcycle, due to which, she sustained multiple grievous injuries. Under these circumstances, the claim petition came to be filed by the claimant before the Tribunal seeking for compensation.



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3. Before the Tribunal, on the side of the claimant, the claimant herself was examined as P.W.1 and Exs.P1 to P11 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 and Ex.X1 was marked. The Disability Certificate was marked as Ex.C1. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that when the Tata Vehicle was proceeding in front of her two wheeler, the claimant had hit against the Tata vehicle on the left side, and therefore, 50% of contributory negligence was fixed against the claimant. Having reached such a finding, the Tribunal proceeded to fix the total compensation at Rs.1,05,125/- under various heads. The above compensation was directed to be paid by the second respondent along with interest at 7.5% p.a.

4. The claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed this appeal seeking enhancement of compensation.



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5. The learned counsel appearing for the appellant submitted that the Tribunal erred in fixing the contributory negligence on the part of the appellant, despite the fact that the FIR was registered against the driver of the first respondent, in fact, the accident had occurred due to rash and negligent driving of the first respondent and hence, fixing 50% of contributory negligence on the appellant is unsustainable in law. He further submits that the appellant was doing business and earning a sum of Rs.15,000/- per month and due to the accident, the appellant sustained 15% disability and the amount of Rs.5,000/- per percentage of disability awarded by the Tribunal is wholly inadequate. Further, the Tribunal has not awarded any compensation under the head 'loss of income during the treatment period' and 'attender charges' and the amount awarded under the other heads is also very minimal. Hence, the learned counsel for the appellant prays for enhancement of compensation.



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6. The first respondent remained ex-parte before the Tribunal.

7. The learned counsel appearing for the second respondent submits that due to the negligence on the part of the appellant, the accident had occurred and therefore, 50% of contributory negligence has been fixed against the appellant and further, the compensation awarded by the Tribunal is also on the higher side. Hence, he prays for dismissal of this appeal.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. A copy of the FIR which was marked as Ex.P1 shows that the petitioner had hit against the Tata vehicle on the left side. The appellant/claimant herself admitted in cross-examination that she had hit on the Tata Dost vehicle as the Tata Dost van took U-Turn. Therefore, it was held by the Tribunal that since the appellant hit against Tata Dost vehicle,



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she would have contributed to the accident and hence, 50% of contributory negligence was fixed on the appellant by the Tribunal. This Court is not inclined to interfere with the finding of the Tribunal insofar as the negligence aspect is concerned.

10. The next issue pertains to fixation of compensation under various heads.

11. In the instant case, the accident had taken place in the year 2022. However, the Tribunal, while adopting the per percentage method, has fixed only a sum of Rs.5,000/- per percentage for granting compensation under the head 'disability'. Taking into consideration the raise in the cost of living and considering the fact that the accident had taken place in that case in the year 2022, this Court is inclined to fix an amount of Rs.9,000/- per percentage. Accordingly, the compensation under the head 'disability' is fixed at Rs.1,35,000/- (Rs.9,000/- * 15%).



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12. The appellant has sustained 15% disability and therefore, she would not have attended her work atleast for a period of one month. However, the Tribunal has not awarded any compensation under the head 'loss of income during the treatment period' and hence, a sum of Rs.20,000/- is awarded under the head 'loss of income during the treatment period'. Insofar as the compensation awarded under the head 'Transport to hospital', 'Extra Nourishment' and 'pain and suffering' is concerned, the same is on the lower side and is enhanced to Rs.10,000/-, Rs.30,000/- and Rs.50,000/-. Since the Tribunal has not awarded any compensation under the head attender charges, this Court is inclined to award a sum of Rs.10,000/-. The compensation that has been awarded under the head medical bills does not require the interference of this Court. Further, this Court finds that there is no ground to award a sum of Rs.10,000/- towards mental agony and shock and the same is hereby set aside.

13. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:



<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Disability (Rs.9,000/- * 15%)	Rs.75,000/-	Rs.1,35,000/-
2	Transport to Hospital	Rs.5,000/-	Rs.10,000/-
3	Medical Bills	Rs.1,05,249/-	Rs.1,05,249/-
4	Extra Nourishment	Rs.5,000/-	Rs.30,000/-
5	Mental Agony and Shock	Rs.10,000/-	-
6	Pain and Suffering	Rs.10,000/-	Rs.50,000/-
7	Attender Charges	-	Rs.10,000/-
8	Loss of income during treatment period	-	Rs.20,000/-
	Total	Rs.2,10,249/-	Rs.3,60,249/-
	Contributory negligence 50%	Rs.1,05,125/-	Rs.1,80,125/-
	Compensation payable	Rs.1,05,125/-	Rs.1,80,125/-

14. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.1,05,125/- is hereby enhanced to Rs.1,80,125/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second



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respondent is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.168 of 2022 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Poonamallee. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered. No costs.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
Subordinate Court, Ponnammallee, Thiruvallur District.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

ssb

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