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C.M.A.No.1238 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1238 of 2021

Santhosh

...Appellant

Vs

1.K.Nagarajan
2.United India Insurance Co.,
having Office No.66-68, Gandhi Road,
Kancheepuram.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order dated 28.03.2019 passed in MCOP.No.102 of 2013 on the file of the Additional Subordinate Judge, Chengalpattu.

For Appellant : Mr.A.Babu

For Respondents : Ms.M.Meenatchi, for R1
Mr.J.Michael Visuvasam, for R2



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order dated 28.03.2019 passed in MCOP.No.102 of 2013 on the file of the Additional Subordinate Judge, Chengalpattu.

2. The present appeal has been filed challenging the liabilities as well as quantum of compensation awarded by the Tribunal. The Tribunal fixed the compensation, which reads as follows:

I. Pecuniary Loss:

1. Permanent Partial Disability	Rs.60,000/-
2. Partial Loss of Income	Rs.20,000/-
3.Attender's Charges	Rs. 6,000/-
4. Extra Nourishment	Rs.10,000/-
5. Transport Charges	Rs. 5,000/-
6. Medical Bills	Nil
Total	Rs.1,01,000/-

II. Non Pecuniary Loss:

1. Pain and sufferings	Rs.50,000/-
Grand total (I+II)	Rs.1,51,000/-



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3. The learned counsel appearing for the appellant would submit that in the present case, on 11.03.2013, when the injured was riding his two wheeler near ECR, a four wheeler came and hit the injured and hence, the accident occurred. By virtue the said accident, the injured had sustained injuries and 3 inches of his right leg was shortened. Therefore, he incurred permanent disability. Further, he would submit that in the Accident Register, which has been marked as Ex.P2, it has been reported that there is a smell of alcohol from the injured. Therefore, the Tribunal concluded that the accident was occurred due to the rash and negligent driving of the driver of the four wheeler and due to the reason that there was a smell of alcohol on the injured, the Tribunal had fastened 50% liability on the part of the appellant.

4. The learned counsel for the appellant would submit that there is no negligence on the part of the injured and hence, no liability can be fastened by assuming that the injured had consumed alcohol.



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5. Further he would submit that in the present case, only the smell of alcohol had been detected. However, the Doctor had not given any certificate with regard to the consumption of alcohol and hence, he would strongly opposed contributory negligence awarded by the Tribunal.

6. Further, a submission was made by the learned counsel for the respondents that the rider of the two wheeler do not have a valid driving license at the time of accident.

7. On the other hand, the learned counsel appearing for the appellant would submit that it is not that the rider of the two wheeler/injured had driving license or not, but the question is whether the car driver had drove his vehicle in the rash and negligent manner or not. If he drove the car in the negligent manner and the accident occurred due to him, there is no justification in awarding the contributory negligence on the claimant/injured at 50%.

8. After some arguments, both the learned counsel had agreed for reduction of contributory negligence on the part of the injured as 30%.



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Therefore, the contributory negligence is reduced to 30% from 50%.

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9. The learned counsel appearing for the appellant would submit that the Tribunal had awarded the compensation of Rs.3,000/- per percentage of disability. The disability was fixed by the medical board at 20% and a sum of Rs.60,000/- was awarded, which is on the lower side. He would further submit that 3 inches of his right leg was shortened, due to which, he was unable to walk properly. At the time of accident, he was 20 years old and now he is 29 years old and his marriage prospects was also very weak. He cannot lead a normal life. Further, he is presently doing plumbing works and 50% of his capacity was reduced, due to which he cannot climb for doing plumbing works and hence, he would request this Court to award 60% as functional disability.

10. In reply, the learned counsel for the insurance company would strongly oppose for fixing 60% as functional disability and would submit that when the medical board had assessed the disability as 20%, there is no



justification in fixing disability at 60%. Further, he would submit that 3 inches of the right leg of the injured, which was shortened, can be adjusted by wearing special shoe or slipper.

11. Heard the learned counsel for the appellant as well as the respondents and perused the materials available on record.

12. Considering the submission made by the respective counsel, this Court feels that even wearing special shoes/slippers, the injured cannot climb anything for doing plumbing work, which he is supposed to do in the place of where the motors and pumps are situated, due to the shortened leg of 3 inches, no one will come forward to provide any employment. Therefore, though the disability had been assessed by the medical board at 20%, this Court feels it appropriate to award the functional disability to an extent of 50%.

13. Further, the injured had appeared before this Court and his left leg has been slightly bent due to the shortened of his right leg about three inches. With



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this disability, the applicant has to run his life for bread and butter. Therefore, this Court is inclined to award compensation by fixing disability at 50%.

14. As far as notional income is concerned, since the accident took place in the year 2013, this Court feels that the notional income fixed by the Tribunal at a sum of Rs.5,000/- is on the lower side and hence, this Court is inclined to fix notional income as a sum of Rs.9,000/-. By adding 40% future prospects, it would come around,

$$\text{Rs.9,000 (income) + Rs.3,600 (40\% of income) = Rs.12,600/-}$$

15. Further, by applying the multiplier as '17', the loss of income will be calculated as follows:

$$\begin{aligned} &\text{Rs.12,600 (income) * 17 (multiplier) * 12(months)} \\ &\quad * 50\% \text{ (disability) = Rs.12,85,200/-} \end{aligned}$$

16. Since this Court fixed the notional income as Rs.9,000/-, the loss of income for the period of treatment and rest after completion of treatment would be calculated as follows:

$$\text{Rs.9,000 (income) * 4 (months) = Rs.36,000/-}$$



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17. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	Heads	Compensation awarded by Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
1	Permanent Partial Disability	60,000	12,85,200
2	Partial Loss of Income	20,000	36,000
3	Attender's Charges	6,000	6,000
4	Extra Nourishment	10,000	10,000
5	Transport Charges	5,000	5,000
6	Medical Bills	Nil	Nil
7	Pain and sufferings	50,000	50,000
	Total	1,51,000	13,92,200

18. Accordingly, the award stands increased from Rs.1,51,000/- to Rs.13,92,200/-. Since the contributory negligence was fixed at 30% on the part of the injured, a sum of Rs.4,17,660/- shall be deducted from the the award amount of Rs.13,92,200/-, which would come around a sum of Rs.9,74,540/-. In all other aspects, the award of the Tribunal stands confirmed.

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the



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second respondent/insurance company is directed to deposit a sum of Rs.9,74,540/- along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.102 of 2013 on the file of the Motor Accident Claims Tribunal, Chengalpattu. The Tribunal is directed to transfer the entire amount to 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 for the claimant or application for withdrawal from the claimant, whichever is later. No costs.

13.07.2023

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

nsa

To:

The Motor Accident Claims Tribunal,
Chengalpattu.



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KRISHNAN RAMASAMY,J.

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