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C.M.A.No.572 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.572 of 2021

Ramesh

...Appellant

Vs.

1. Kanagaraj

2. The United India Insurance Co., Ltd.,
Divisional Office, HUB Ranga Building,
Peramanur Main Road, Peramanur,
Salem-636 007.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the Judgement and decree in M.C.O.P.No.564 of 2017 dated 30.09.2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.I, Salem.

For Appellant : Mr.C.Paraneedharan

For Respondent No.1 : No appearance

For Respondent No.2 : Mrs.I.Malar

JUDGMENT



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This Civil Miscellaneous Appeal is preferred against the judgment and decree dated 30.09.2020 made in M.C.O.P.No.564 of 2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.I, Salem.

2.Background facts in nutshell are as follows:

According to the petitioner, on 29.08.2016 at about 07.45p.m. The petitioner was travelling in his Hero Honda Splender Motorcycle bearing Registration No.TN-29-P-1533 in the Salem to Kovai High Road. At that time, the 1st Respondent's vehicle bearing registration No.TN-47-R-7999 a tipper lorry was driven by its driver in a rash and negligent manner and dashed against the petitioner's vehicle. The petitioner sustained greivous injuries on his leg upto his knee and also sustained various injuries in all parts of the body. Then the petitioner was immediately admited in the hospital for treatment. The petitioner had taken treatement for 8 days as in-patient at Be Well Hospital, Erode and thereafter he was under treatement as out-patient for 22 days. The petitioner continues to take treatment and he has spent a sum of Rs.5,90,000/- for the said medical treatment. Since the first respondent vehicle was insured with 2nd respondent, the respondents 1 and 2 are liable to pay a compensation for a sum of Rs.2,15,000/- to the petitioner. The 1st respondent remains ex-parte.



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3. The 2nd respondent in his counter affidavit contented that at the time of accident the petitioner was riding his motor vehicle in a rash and negligent manner without wearing helmet and without having any valid license. The petitioner dashed in the center median and sustained head injury and fell down in the middle of the road. The driver of the 1st respondent's tipper lorry who came without expecting the said act, all of a sudden hit the vehicle of the petitioner. The accident would not have happened, if the petitioner had taken care at the time of riding his motor cycle. The petitioner also contributed to the accident and therefore the compensation ought to be reduced in terms of contributory negligence.

4. A case in M.C.O.P.No.564 of 2017 was filed by this petitioner before the Motor Accident Claims Tribunal/Special Subordinate Judge No.I, Salem. The tribunal passed a judgement and decree on 30.09.2020 and awarded compensation and the same is extracted hereunder:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
1.	For injuries and loss of health	50,000/-



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2	Loss of Income	60,000/-
3	Medical expenses	4,02,008
4.	Transport charges	25,000/-
5.	For Nutrition	20,000/-
6	For Assistance	25,000/-
7.	Loss of cloths	1,000/-
8.	Loss of earning	40,000/-
9.	Loss of Income due to permanent disability	1,20,000/-
	Total	7,43,008/-

The Tribunal had also imposed 15% as contributory negligence in the total amount of compensation to the petitioner i.e., $\text{Rs.}7,43,008 \times 15/100 = \text{Rs.}1,11,451/-$. Hence the balance amount of Rs.6,31,557/- is paid to the petitioner with an interest of 7.5% p.a.

5. Aggrieved by the same, the injured/Appellant has preferred this present Civil Miscellaneous Appeal. The learned counsel for the Appellant contended that the accident occurred only due to the rash and negligent driving by the driver of the tipper lorry. However, the tribunal erroneously fixed 15% for the contributory negligence against the petitioner. The learned counsel for the Appellant further contended that at the time of accident the petitioner was working as "Cooli" in a Silver workshop and he was earning sum of Rs.14,000/- per month. The petitioner had sustained multiple grievous injuries and fracture on various parts of his body.



He had taken treatment as in-patient from 29.08.2016 to 29.09.2016 and also underwent surgeries. After discharge from hospital, the petitioner was unable to work as before and also taking treatment continuously. Though the medical board has assessed 40% of permanent disability as per Ex.C.1, the petitioner is still facing pain in the fractured site and finds difficult in walking and climbing upstairs and walking on slopes. The tribunal ought to have applied multiplier method, while awarding the compensation for the disability suffered by the petitioner.

6. The learned counsel for the Appellant further contended that for the disability, the tribunal ought to have fixed a sum of Rs.5,000/- for each percentage of disability. The learned counsel further contended that the salary of the petitioner is Rs.14,000/- per month, but the Tribunal erroneously fixed the monthly income to the petitioner at Rs.7,500/- which is very low.

7. On the other hand the learned counsel appearing for the Respondent contended that the Tribunal has rightly fixed 15% for the contributory negligence of the petitioner, since the accident occurred only due to the rash and negligent act of the petitioner.

8. Heard on both side, records perused.

9. The appellant has preferred the present appeal challenging the percentage



fixed by the tribunal for the disability suffered by the claimant and with regard to fixing 15% for contributory negligence. On perusal of the oral and documentary evidence it is seen that the petitioner at the time of the accident was not wearing the helmet. Therefore, the Tribunal has rightly fixed 15% for contributory negligence on the part of the petitioner.

10. With regard to the disability suffered by the claimant, the appellant has not proved that he suffered functional disability. Therefore, he is not entitled for compensation by multiplier method. However, the Tribunal ought to have fixed a sum of Rs.5000/- for each percentage of disability as per the judgment ***National Insurance Company Ltd. Vs G.Ramesh and Another*** reported in **2013 (2) TNMAC 583**.

11. It is seen that the appellant has suffered head injury in the said accident to substantiate the injury sustained by him, P.W.2 the doctor who had examined the Appellant had deposed about the nature of injuries and treatment taken by the Appellant and assessed the disability at 40%. Further the amount awarded by the



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tribunal is enhanced to Rs.5,000/- (Rupees five thousand only) per percentage of disability. Accordingly a sum of Rs.2,00,000/- is awarded to his disability. The contention of the appellant is that at the time of accident he was earning a sum of Rs.14,000/- as monthly income. However the Tribunal fixing his monthly income at Rs.7500/- is very low which requires interference and considering the avocation of the appellant, a sum of Rs.12,500/- is fixed as monthly income of the appellant. Therefore, the total award of compensation is as follows:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1	For injuries and loss of health	50,000/-	50,000/-	Confirmed
2	Loss of monthly Income	60,000	1,00,000/- (12,500X8)	Enhanced
3.	Medical expenses	4,02,008/-	4,02,008/-	Confirmed
4.	Transport charges	25,000/-	25,000/-	Confirmed
5	For Nutrition	20,000/-	20,000/-	Confirmed
6.	For Assistance	25,000/-	25,000/-	Confirmed
7.	Loss of cloths	1,000/-	1,000/-	Confirmed
8.	Loss of earnings	40,000/-	40,000/-	Confirmed
9.	Loss of Income due to permanent disability	1,20,000/-	2,00,000/- (40X5000)	Enhanced
	Total	7,43,008/-	8,63,008/-	Enhanced by Rs.1,20,000/-

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



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compensation awarded by the tribunal is enhanced from Rs.7,43,008/- to Rs.8,63,008/- together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit.

13. The 2nd respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is entitled to withdraw the amount. There shall be no order as to costs.

10.10.2023

gvn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To:-

Motor Accident Claims Tribunal/
Special Subordinate Judge No.I,
Salem.



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gvn/vsn

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