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Civil Miscellaneous Appeal No.1158 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1158 of 2024

Palani

... Appellant

Vs.

1. K.Vignesh

2. Magma HDI General Insurance Co Ltd.,
Having registered office at Magma House,
24 Park Street, Kolkatta – 700 016
Policy Serving office at
Nivin's Presidium, 3rd Floor, N.M.Road,
New No.17/19, Old No.103,
B Black, 3A Nelson Manickam Road,
Chennai 600 029
Having branch office at
Door No.4/454, Ram Complex, 2nd Floor,
Near New Bus Stand, ARRS Multiplex Road,
Salem – 636 009

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award in M.C.O.P.No.1384 of 2019 dated 26.10.2022 on the file of the Motor Accident Claims Tribunal, Special



Civil Miscellaneous Appeal No.1158 of 2024

Subordinate Judge No.2, Salem.

For Appellant : R.Navaneetha Krishnan

For Respondents : R1 – Set Exparte
M/s.R Sree Vidhya for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal and also attributing 15% contributory negligence, has filed this appeal challenging the award passed in M.C.O.P.No.1384 of 2019 dated 26.10.2022 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.2, Salem.

2. The case of the claimant is that on 28.02.2019, when he was travelling in his two wheeler at Perumbanai – Samathal road and when the two wheeler was approaching a cross road near Kombaliyur at about 6.30 p.m, the offending vehicle belonging to the 1st respondent was driven in a rash and negligent manner and the same dashed on the two wheeler. As a result of which, the claimant was thrown away from the two wheeler and he sustained the following injuries :-

1. Closed fracture left shaft of femur and ulna



2. *Type I open fracture both bone left leg*
3. *Abdominal injury with splenic laceration / ileal perforation.*
4. *Head injury – scalp haematoma*
5. *Right inferior public rami fracture*

3. The claimant under went treatment for nearly 27 days and almost five surgeries were performed. The injuries were so severe that a portion of his intestine was removed. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the accident had taken place only due to the rash and negligent driver of the offending vehicle. To arrive at such a conclusion, the Tribunal took into consideration the evidence of PW1 and also the FIR, which was marked as Ex.P1 and the final report, which was marked as Ex.P10. Having rendered such a finding, the Tribunal proceeded to attribute 15% contributory negligence against the claimant on the ground that the



claimant did not possess a valid driving license.

5. The Tribunal thereafter fixed the total compensation at Rs.10,01,311/- under various heads in the following manner :-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	மனுதாரருக்கு ஏற்பட்ட நிரந்தர ஊனத்திற்காக (30% x Rs.5000)	Rs.1,50,000/-
2.	மனுதாரருக்கு ஏற்பட்ட வலி மற்றும் வேதனைகளுக்காக	Rs.30,000/-
3.	மனுதாரருக்கு ஏற்பட்டுள்ள வாழ்க்கை வசதி இழப்புக்காக மனுதாரரின் வயிற்றில் செரிமான பகுதியில் உள்ள குடலில் ஒரு பகுதி நீக்கப்பட்டு செயற்கை பிளாஸ்டிக் குடல் வைக்கப்பட்டுள்ளதால் உணவின் அளவு எடுத்துக்கொள்வதில் அது செரிமானம் ஆவதிலும் மனுதாரருக்கு இடர்பாடுகள் உள்ளதாகவும் மற்றும் மனுதாரரின் கால் பகுதி உடலுடன் இணையும் உலர்ந்த எலும்பு பகுதி (DCP ulna left) சிகிச்சைக்கு பிறகும் சரியாக சுடவில்லை என்றும். ம.சா.ஆ 3 மருத்துவ விடுவிப்பு ஆவணத்தின் அடிப்படையில் மனுதாரர் தரப்பில் முன் வைக்கப்பட்ட வாதத்தினை ஏற்று,	Rs.50,000/-
4.	மனுதாரருக்கு ஏற்பட்ட மருத்துவ செலவினங்களுக்காக ம.சா.ஆ 5 ல் கண்டவாறு	Rs.6,40,311/-
5.	மனுதாரருக்கு சிகிச்சையின் போதும் ஓய்வின்	Rs.50,000/-



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
	போதும் ஏற்பட்ட வருமான இழப்புக்காக (Rs.10,000/- x 5 மாதங்கள்)	
6.	மனுதாரருக்கு ஏற்பட்ட போக்குவரத்து செலவினங்களுக்காக	Rs.25,000/-
7.	மனதாரரின் ஊட்டச்சத்து செலவினங்களுக்காக	Rs.25,000/-
8.	மனதாரர் உதவியாளர் வைத்துக்கொண்டதற்கு ஏற்பட்ட செலவினங்களுக்காக	Rs.30,000/-
9.	மனதாரரின் உடைகளுக்கு ஏற்பட்ட சேதங்களுக்காக	Rs.1,000/-
	மொத்த இழப்பீட்டுத் தொகை	Rs.10,01,311/-

Out of the above compensation, 85% of the liability was fixed on the respondent/insurance company to the tune of Rs.8,51,115/- and the said amount was directed to be paid with interest at the rate of 7.5% per annum.

6. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement of compensation and for setting aside the contributory negligence attributed against the claimant.

7. Heard Mr.R.Navaneetha Krishnan, learned counsel for



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appellant/claimant and M/s.R.Sreevidhya, learned counsel for second respondent insurance company.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The Tribunal on appreciating the evidence of PW1 and also the FIR and the final report, which was marked as Ex.P1 and Ex.P10, came to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. The Tribunal also gave a finding that the respondent did not take any steps to examine the driver of the offending vehicle and there was no contra evidence available and there was nothing to discredit the evidence of PW1 in this case.

11. Having rendered the above finding, the Tribunal had fixed



15% contributory negligence against the claimant only on the ground that he did not possess a valid driving license.

12. The Apex Court in ***[Dinesh Kumar Vs.National Insurance Company Limited and others]*** reported in ***2018 1 SCC 750*** has categorically held that driving a vehicle without a license by itself cannot lead to an assumption that there was negligence on the part of the driver of the vehicle. In other words, there must be independent evidence available to show that the driver of the vehicle had in fact contributed to some portion of the negligence as a result of which the accident had taken place. This view has been consistently taken in many cases. Therefore, the finding of the Tribunal attributing 15% contributory negligence against the rider of the two wheeler only on the ground that he did not possess a valid driving license cannot be sustained and accordingly, the same is hereby interfered and set-aside.

13. The next issue pertains to the quantum of compensation that was fixed under various heads.



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14. In the instant case, the accident had taken place in the year 2019 and the Medical board on assessing the disability suffered by the claimant has come to a conclusion that the claimant had suffered 30% permanent disability. The Tribunal has only fixed Rs.5,000/- per percentage. However, as per the judgement of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022, Rs.7,000/- has to be fixed per percentage and hence, the compensation under the head of permanent disability is fixed at $30\% \times 7000 = \text{Rs.}2,10,000/-$.

15. The claimant had suffered serious injuries and was taking treatment as an in patient for nearly a month and he had also undergone five surgeries and in view of the same, this Court is inclined to enhance the compensation under the head of pain and sufferings to Rs.50,000/-.

16. Insofar as the loss of income is concerned, the Tribunal has taken the notional monthly income only at Rs.10,000/-. This Court is inclined to increase the notional monthly income to Rs.12,500/- and considering the nature of injuries, the claimant would have been out of action for atleast eight months. Therefore, the compensation under the



head of loss of income is fixed at Rs.1,00,000/- (12,500 x 8 months).

17. Insofar as all the other heads are concerned, the compensation fixed by the Tribunal is reasonable and it does not require the interference of this Court.

18. In the light of the anbove discussion, the compensation fixed by the Tribunal is modified in the following terms :-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	மனுதாரருக்கு ஏற்பட்ட நிரந்தர ஊனத்திற்காக (30% x Rs.7000)	Rs.2,10,000/-
2.	மனுதாரருக்கு ஏற்பட்ட வலி மற்றும் வேதனைகளுக்காக	Rs.50,000/-
3.	மனுதாரருக்கு ஏற்பட்டுள்ள வாழ்க்கை வசதி இழப்புக்காக மனுதாரரின் வயிற்றில் செரிமான பகுதியில் உள்ள குடலில் ஒரு பகுதி நீக்கப்பட்டு செயற்கை பிளாஸ்டிக் குடல் வைக்கப்பட்டுள்ளதால் உணவின் அளவு எடுத்துக்கொள்வதில் அது செரிமானம் ஆவதிலும் மனுதாரருக்கு இடர்பாடுகள் உள்ளதாகவும் மற்றும் மனுதாரரின் கால் பகுதி உடலுடன் இணையும் உலர்ந்த எலும்பு பகுதி (DCP ulna left) சிகிச்சைக்கு பிறகும் சரியாக	Rs.50,000/-



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
	சுடவில்லை என்றும். ம.சா.ஆ 3 மருத்துவ விடுவிப்பு ஆவணத்தின் அடிப்படையில் மனுதாரர் தரப்பில் முன் வைக்கப்பட்ட வாதத்தினை ஏற்று,	
4.	மனுதாரருக்கு ஏற்பட்ட மருத்துவ செலவினங்களுக்காக ம.சா.ஆ 5 ல் கண்டவாறு	Rs.6,40,311/-
5.	மனுதாரருக்கு சிகிச்சையின் போதும் ஓய்வின் போதும் ஏற்பட்ட வருமான இழப்புக்காக (Rs.12,500/- x 8 மாதங்கள்)	Rs.1,00,000/-
6.	மனுதாரருக்கு ஏற்பட்ட போக்குவரத்து செலவினங்களுக்காக	Rs.25,000/-
7.	மனதாரரின் ஊட்டச்சத்து செலவினங்களுக்காக	Rs.25,000/-
8.	மனதாரர் உதவியாளர் வைத்துக்கொண்டதற்கு ஏற்பட்ட செலவினங்களுக்காக	Rs.30,000/-
9.	மனதாரரின் உடைகளுக்கு ஏற்பட்ட சேதங்களுக்காக	Rs.1,000/-
	மொத்த இழப்பீட்டுத் தொகை	Rs.11,31,311/-

19. The compensation awarded by the Tribunal at Rs.10,01,311/- is enhanced to Rs.11,31,311/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of



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Rs.1,30,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 314 days as was ordered by this Court in C.M.P.No.6933 of 2024, dated 23.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

20. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

07.06.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH.,J
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To



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Motor Accident Claims Tribunal, Special Subordinate Judge No.2, Salem.

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