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CM.A.No.3195 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.3195 of 2021

M.Kannaiyan

...Appellant

Vs.

1. Fahana Kalil

2. M/s.Future General India Insurance Company Ltd.,

6th Floor, Tower 3, India Bulls Finance Center,

Senapati Bapat Marg,

Elphinstone Road,

Mumbai – 400 013

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to set aside the judgment and decree dated 02.12.2019 made in M.C.O.P.No.646 of 2015 on the file of MACT/Additional District Court (FAC) at Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.E.Rajadurai for R2

Notice Dispensed with for R1



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JUDGMENT

The above Civil Miscellaneous Petition is directed against the judgment and decree dated 02.12.2019 passed in M.C.O.P.No.646 of 2015 on the file of the Motor Accident Claims Tribunal/Additional District Court (FAC), Namakkal.

2. Shortly stated, on 22.08..2014 at about 10.00 a.m near Kalangani Over Bridge, Puduchathiram, the petitioner was riding a Honda bike bearing Registration No.TN 28 H 4570 on the left side of the road towards Chinnappanaickennpatti from his residence. At that time, a Hyundai Grand I 10 Car bearing Registration No.TN 70 M 0192 driven by its driver, drove the vehicle in a rash and negligent manner and without noting the traffic and suddenly hit behind the above said Honda bike. Due to the above accident, the petitioner sustained serious injuries all over the body. The accident occurred only due to the rash and negligent driving of the driver of the car bearing Registration No.TN 70 M 0192. Immediately after the accident, the petitioner/injured was admitted in Bharathi Hospital, Namakkal for first aid



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and then, he was admitted in Ganga Hospital, Coimbatore for treatment and a sum of Rs.2,00,000/- has been spent towards medical and other expenses. FIR was registered against the driver of the offending vehicle.

3. The 2nd respondent/Insurance in its counter affidavit resisted the claim of the petitioner by stating that in the investigation done by the Namagiripettai Police, it is found that the injured was responsible for the accident due to his negligent driving of the two wheeler. The Namagiripettai Police closed the FIR as “mistake of fact”. It is also submitted that the accident occurred solely due to the carelessness and negligence on the part of the injured. The injured ought to have been cautious while crossing the main road and it is specifically denied that the motorcycle bearing Registration No.TN 70 M 0192 came in a rash and negligent manner and dashed on the vehicle of the injured. Hence, the 2nd respondent is not liable to compensate the petitioner herein for the negligence of the injured.

4. Before the trial Court, the petitioner examined himself as P.W.1 and the eyewitness was examined as P.W.2. Exs.P1 to P10 were marked. On



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the side of the respondents, R.W.1 was examined and Ex.R1 was marked .

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6. P.W.2, the Doctor has assessed the disability caused to the petitioner as 14.6%. The evidence of P.W.2, is extracted as hereunder:

“1. இடது நெற்றியில் சிராய்ப்பும், இடது புருவத்தில்கிழிந்து காயமும், இடது கன்னத்தில் சிராய்ப்பும் இருந்தது.

2. வலது மேல் கையில் வீக்கமும், தொடு வலியுடனும், கோணலாகவும் இருந்தது.

3. வலது காதில் சிராய்ப்புடன் இருந்தது.

4. இடது கால் சிராய்ப்புடன் இருந்தது. அவருக்கு நுண்கதிர் பரிசோதனை செய்ததில் வலது மேல் கை உடைந்து இருந்தது. அவருக்கு 22.08.2014 மற்றும் 23.08.2014 ஆகிய இரு தேதிகளில் அறுவை சிகிச்சை செய்து காயங்களின் எலும்பு முறிவுகளை சீர் செய்தோம். அவருக்கு 23.07.2019ம் தேதியன்று ஊனத்தின் சதவிகித்தை கணக்கிட நுண்கதிர் மற்றும் மருத்துவ பரிசோதனை செய்யப்பட்டது. அவற்றில் வலது மேல் கை எலும்பு கூடியிருந்தாலும் தகடும், திருகாணிகளும் தளர்ந்து இருந்தன. வலது முழங்கையின் மடக்கும்திறன் சுமார் 50 டிகிரி அளவுக்கு காயப்படாத இடது முழங்கையை விட குறைவாகக் காணப்பட்டது. வலது காணுக்காலில் தோள் மற்றும் அறுவை சிகிச்சைக்கான தழும்பு



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சீர் அற்று இருந்தது. எனவே, அவருக்கு ஏற்பட்ட காங்களின் விளைவாக தற்போது இருக்கும் ஊனத்தின் அளவு 14.6% சதவீதம் என்று ஊனச் சான்றிழ் வழங்கியுள்ளேன். மேலும் அவருக்கு வைத்திருந்த தகடு மற்றும் திருகாணி தளர்ந்து இருந்ததால் அவற்றை அகற்றிக் கொள்ள அறிவுறுத்தியுள்ளோம். அதற்கு எங்கள் மருத்துவமனையில் சிகிச்சை எடுத்துக்கொண்டால் ஆகம் செலவு சுமார் ரூ.30,000/- என்று குறிப்பிட்டுள்ளோம்.”

6.The Tribunal based on the available materials on record fixed the disability as 14.6 % and awarded a sum of Rs.3000/- per percentage for the accident of the year 2014, which is under challenge in this appeal by the injured.

7.The learned counsel appearing for the appellant/injured would argue that the accident in this case took place in the year 2014. However, the Tribunal has awarded only a sum of Rs.3000/- for each percent of disability, which is very meager. To support his contention, he relied upon the judgment ***M.Chinnathambi Vs. S.Deepa*** reported in ***2020 (1) TN MAC 617***, in which it is held as follows:-

“This Court by the Judgment reported in the matter of National Insurance Co. Ltd. v. G. Ramesh, 2013 (2) TN MAC



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583, granted Rs.3,000 per percentage for accident occurred in the year 2009, enhancing from Rs.2,000 per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3,000 per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to be enhanced. Taking into consideration the raise in cost of living, it will be reasonable to Award a sum of Rs.4,000 per percentage for the accident of the year 2014 and 2015 and Rs.5,000 per percentage for the accident from the year 2016 onwards towards disability certified by the qualified Doctor or Medical Board. In the present case, the accident has occurred on 1.7.2016. A sum of Rs.5,000 per percentage of disability is granted. Accordingly, a sum of Rs.60,000 (Rs.5,000 x 12%) is awarded towards disability by awarding a sum of Rs.5,000 per percentage of disability.”

8. Considering the nature of injuries and the surgery undergone by the petitioner/injured, this Court deems it fit to fix the disability as 15% which would be reasonable for the disability caused to the injured and it would also be reasonable to award a sum of Rs.4000/- per percentage for the accident of the year 2014 **[Ref: 2020(1) MAC 617]**. Therefore, the amount granted by the



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Tribunal towards disability is modified to Rs.60,000/- [Rs.4,000/- X 15].

9. The learned counsel for the appellant/injured would further submit that applying the principles laid down in ***M.Chinnathambi case*** the Tribunal ought to have fixed Rs.10,000/- as monthly income of the appellant/injured, who was an Agriculturist at the time of accident. Some substance is found in the contention of the learned counsel for the appellant.

10. Due to the injuries sustained by him, the appellant/injured would have undergone treatment atleast for a period of five months and he would not have carried out any Agricultural work. As stated above a sum of Rs.10,000/- is fixed by this Court as monthly income of the appellant/injured. Therefore, the appellant is entitled to a sum of Rs.50,000/- (Rs.10,000 X 5) towards Loss of Income for five months.

11. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that a meagre amount is granted under the heads of Pain



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and sufferings, Transportation and Extra-Nourishment. Therefore, the same is hereby enhanced to Rs.30,000/-, Rs.10,000/- and Rs.10,000/- respectively.

12. It is found that the Tribunal has not awarded any amount towards Loss of Amenities and Attender Charges. Considering the nature of injuries and disability suffered by the appellant/injured, a sum of Rs.25,000/- and Rs.10,000/- are granted toward Loss of Amenities and Attender Charges. The award granted by the Tribunal under the head of Medical Expenses is just and reasonable and hence, it is hereby confirmed

13. From the evidence placed on record, the Tribunal has rightly apportioned 20% as Contributory Negligence for negligent act of the appellant/injured. The said finding of the Tribunal in this regard is confirmed.

14. The compensation awarded by the Tribunal is modified as follows:

S.	Description	Amount	Amount	Award
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No		awarded by Tribunal (Rs)	awarded by this Court (Rs)	confirmed or enhanced or granted
1.	15% Disability	43,800/-	60,000/-	modified
2.	Medical Expenses	1,32,014/-	1,32,014/-	confirmed
3.	Transportation	5000/-	10,000/-	enhanced
4.	Pain and Sufferings	5000/-	30,000/-	enhanced
5.	Loss of Income	19,500/-	50,000/-	Enhanced
6.	Extra-Nourishment	5,000/-	10,000/-	enhanced
7.	Loss of Amenities	—	25,000/-	granted
8.	Attender Charges	—	10,000/-	granted
	Total	Rs.2,10,314/-	Rs.3,27,014/-	enhanced by Rs.1,16,700/-
	80% of the award amount	Rs.1,68,240/-	Rs.2,61,611/-	enhanced by Rs.93,371/-

15.The 20% of contributory negligence fixed by the Tribunal on the part of the appellant/injured is hereby confirmed and 80% of the total award amount of Rs.2,61,611/- (Rs.327014 X 80%) is awarded as compensation to the injured.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,68,240/- is hereby



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enhanced to Rs.2,61,611/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, 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 appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

06.02.2024

mac/vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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K.GOVINDARAJAN THILAKAVADI, J.

mac/vsn

To

1. The Motor Accident Claims Tribunal,
The Additional District Court (FAC) at Namakkal.
2. The Section Officer,
VR Section,
High Court, Madras.

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06.02.2024