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C.M.A.No.1160 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1160 of 2024

Egambaram

... Appellant

..Vs..

1. K. Kannan

2. Reliance General Insurance Company Limited,
Reliance House,, 6th Floor, No.06,
Haddows Road, Nungambakkam
Chennai 6

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 12.06.2023 passed in M.C.O.P. No.4136 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Court of Small Causes, Chennai.

For Appellant : Ms. K. Ashwini
for Mr. V. Tamilamudhu

R1 : Notice dispensed with
For R2 : Ms. G. Sukumari



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JUDGMENT

The appellant is the claimant in M.C.O.P.No.4136 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Court of Small Causes, Chennai and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.25,00,000/- for the injuries sustained by him in a road accident that took place on 07.09.2016.

2. The case of the claimant is that on 07.09.2016 he was riding a two wheeler bearing Registration No.TN 19 AB 0409 on Tiruporur - Kelambakkam OMR Road and at about 10 a.m a TATA Ace vehicle bearing Registration No.TN-19-B-1941, owned by the first respondent, came in the opposite direction and hit his two wheeler, as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to the hospital where he was treated as an inpatient for five days.

2.1. According to the claimant, the rash and negligent driving of the driver of TATA Ac vehicle bearing Registration No.TN-19-B-1941 was



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the cause of the accident and that since the said vehicle was insured with the second respondent, the Reliance General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal after analysing the evidence on record fixed 10% contributory negligence on the part of the claimant and awarded a total compensation of Rs.2,70,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 12.06.2023. The Tribunal also held that the liability of the respondents are joint and several

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of



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the Motor Vehicles Act, 1988.

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6. Heard Ms. K. Ashwini, learned counsel for the appellant and Ms. G. Sukumari, learned counsel for the second respondent.

7. Ms. K. Ashwini, learned counsel for the appellant contended that the claimant is a tailor by profession and on account of the injury on his right eye, his profession is adversely affected. According to her, the claimant was earning a sum of Rs.20,000/- per month and however, the Tribunal has fixed his notional monthly income as Rs.10,000/-, which is on the lower side. She therefore prayed for overall enhancement of compensation.

8. Per contra, Mrs. G. Sukumari, learned counsel appearing for the second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.



9. In the discharge summary (Ex.P3) issued by the Chettinad Super Speciality Hospital, it is stated that the claimant has sustained severe degloving injury involving the right side of forehead extending to the right upper eyelid. The operative notes in the Discharge Summary reads thus:

"Under GA with strict aseptic precautions, parts painted, draped. Through saline wash given with 1.5 Lg NS. Upper/lower eyelid repair done in layers using 4-o monocryl / 5-o prolene. Other facial lacerations in right temporal region / right cheek / right chin sutured with 5-o prolene after seeing hemostasis Dressing done. Head bandage applied (Large flap in the pre auricular region had a narrow base with degloving -> flap repositioning done with acorn. If it recovers -> later plan for cover".

Thus it is seen that there is no injury affecting the vision of the claimant. The Medical Board has also assessed partial permanent disability as 24%. Therefore, the Tribunal was right in awarding a sum of Rs.1,20,000/- (24 x 5,000 per percentage) towards partial permanent disability.



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9.1. The claimant is a tailor by profession and therefore, the monthly income of the claimant is fixed at Rs.15,000/-. On account of the accident the claimant would have been out of action atleast for three months and therefore the loss of income has to be computed for three months, which comes to Rs.45,000/- (15,000 x 3).

9.2. The Tribunal had fixed negligence on the part of the claimant on the ground that he was not wearing a helmet at the time of accident. When the records show that the driver of TATA Ace vehicle bearing Registration No.TN-19-B-1941 was rash and negligent in driving his vehicle, 10% of contributory negligence cannot be fastened on the claimant merely because he was not wearing helmet at the time of accident.

9.3. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability	1,20,000/- (Rs.10,000/- x 3 months)	1,20,000/-
2.	Pain and sufferings	30,000/-	30,000/-
3.	Transportation	4,000/-	10,000/-
4.	Medical expenses	1,04,316/-	1,04,316/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Attender's charges	1,500/-	2,500/-
7.	Loss of earning	20,000/- (10,000/- x 2 months)	45,000/- (15,000/- x 3 months)
8.	Loss of amenities	10,000	10,000/-
	TOTAL	2,99,816/- Rounded off to Rs.3,00,000/-	3,31,816/-
		90% compensation after deducting 10% contributory negligence	
		2,70,000/-	

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,70,000/- to Rs.3,31,816/- which would carry interest at the rate of 7.5% per annum.



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11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The orders passed by the Tribunal fixing contributory negligence on the part of the claimant to the extent of 10% is set aside.

(iii) The compensation awarded by the Tribunal is enhanced from Rs.2,70,000/- to Rs.3,31,816/-.

(iv) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The second respondent, Reliance General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.3,31,816/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.4136 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order.



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(vi) On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.

22.08.2024

Index : Yes/No
Internet : Yes/No
bga

To

1. Motor Accident Claims Tribunal,
Special Sub Court No.I, Court of Small Causes, Chennai.
2. Reliance General Insurance Company Limited
Reliance House, 6th Floor, No.06,
Haddows Road, Nungambakkam
Chennai 6
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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