



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :05.09.2017
PRONOUNCED ON: 21.11.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 606 of 2017

and

C.M.P(MD)No.7599 of 2017

Murugan

... Appellant / Petitioner

Vs.

1.Ganapathy

2.The Divisional Manager,
United India Insurance Company Limited,
South Main Street,
Thanjavur District.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 20.06.2016 made in M.C.O.P.No.291 of 2015 on the file of the Motor Accidents Claims Tribunal / Special Sub Judge, Thanjavur.

For Appellant : Mr.K.Bhaskaran
For R-1 : No Appearance
For R-2 : Mr.A.Ilango

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award, dated 20.06.2016 made in M.C.O.P.No.291 of 2015 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Thanjavur.

2. It is a case of injury sustained by the appellant/claimant, in an accident, which took place on 06.09.2014 at Kumbakonam to Poompukar road near Riverside Hotel on the opposite side of Municipal School.

3. It is the case of the injured/claimant before the Tribunal that on the date of accident, when he was riding his Herohonda motorcycle bearing Registration No.TN 49 T 6638, the Tractor bearing registration No.TN 68 L 7293, which came from the opposite direction, was driven by its driver in a rash and negligent manner and dashed against the two-wheeler and as a result, the injured/claimant sustained grievous injuries.



4. The injured/claimant filed an application in M.C.O.P.No.291 of 2015, on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Thanjavur, seeking compensation.

5. Before the Tribunal, the injured/claimant examined two witnesses as P.Ws.1 and 2 and marked eight documents as Ex.P.1 to Ex.P.8. On the side of the respondents one witness was examined as R.W.1 and six documents were marked as Ex.R1 to R6.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred due to the negligent act of the driver of the Tractor as well as the injured/claimant and fixed the negligence at 90:10 and since the Trailer is not insured with the second respondent, directed the owner of the Tractor to pay 90% of the award amount.

7. Against which, the appellant/claimant filed this present appeal challenging the liability as well as quantum.

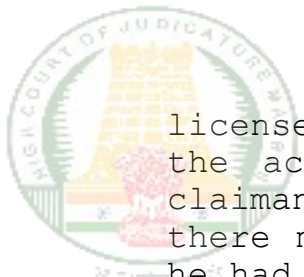
8. The learned counsel appearing for the appellant submits that despite overwhelming evidence available, the Court below had fixed 10% contributory negligence on the claimant for the reason that the claimant did not have driving license as well as insurance, which is not sustainable in the eye of law. In support of his contention, he relied on the judgment reported in 2012(2) TN MAC 193, M.Ramanan and F.Christy. Further, the claimant had taken treatment for atleast 84 days, however, the Court below has awarded only lesser compensation and therefore, prays for appropriate orders.

9. The learned counsel appearing for the insurance company submits that the Court below in the penultimate paragraph No.7 has rightly recorded the findings with regard to the contributory negligence against the claimant on the basis of the evidence available before it, which need not be interfered by this Court. He also submits that the Court below has awarded just and reasonable compensation and therefore, prays for the dismissal of this civil miscellaneous appeal.

10. Heard the learned counsel appearing for the respective parties and perused the materials available on record.

11. As far as the contributory negligence is concerned, I find much force on the submission of the learned counsel appearing for the claimant by sailing on the judgment, which is reported in 2012(2) TN MAC 193, M.Ramanan and F.Christy, wherein, in paragraph No.12, it has been held as follows:-

"12.Thus, from the above, it is clear that to hold a person that he had contributed to the accident, it must be established by evidence that he had committed rash and negligent act and merely on account of his not having driving

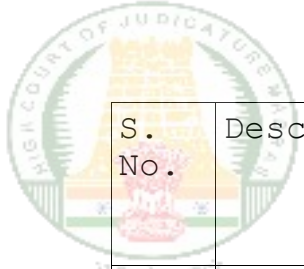


license alone, it cannot be held that he had contributed to the accident. Even at the time of the accident, if the claimant or the deceased did not possess driving license, there must be a further finding that by his act or omission he had materially contributed to the accident."

In the case on hand, the Court below has not recorded any specific finding to the effect that it is because of the claimant the accident had occurred. It has only recorded a finding that he did not have driving license as well as insurance. Therefore, applying the judgment stated supra, I come to the conclusion that fixing 10% liability on the claimant stand set aside and the first respondent vehicle alone is responsible for the accident occurred.

12. Coming to the quantum of compensation, the claimant had been in the hospital for atleast 84 days as inpatient and the treatment taking by the claimant is narrated in paragraph No.10 of the impugned judgment. Being a mason, he suffered severe injuries on his right leg and hands, which are important parts of the body for carrying out his work. However, the Court below has awarded only Rs.40,000/- towards pain and sufferings, which is on the lower side. Therefore, this Court, enhances the award to Rs.1,50,000/- from Rs.40,000/-, under the head of partial disability, though the Court below has discussed the severity of the injury suffered by the claimant and recorded the disability granted by the doctor to the tune of 46%, without assigning any reason, it has considered only 40% and this Court is of the considered view that taking note of the injuries suffered by him, 46% disability given by the doctor can be taken into consideration for the purpose of arriving at partial permanent disability. Therefore, the award under the head of partial permanent disability is enhanced to Rs.1,38,000/- from Rs.1,20,000/-. Further, under the head of nutrition only Rs.20,000/- is awarded. As stated earlier, he had been taking treatment for atleast 84 days as an inpatient and a lot of amount would have been spent to recover by supplying nutritious food to the claimant. Therefore, this Court enhances to a sum of Rs.50,000/- under the head of nutrition from Rs.20,000/-. Similarly, this Court finds it reasonable to fix atleast Rs.40,000/- under the head of attender. Apart from taking treatment in the government hospital for about 84 days, he went on two occasions for further treatment as an outpatient. Therefore, under the head of transport, this Court enhances the award from Rs.5,000/- to Rs.10,000/-. The claimant has lost income atleast for 84 days as an inpatient in the government hospital and even thereafter, he would not have gone to work in view of the injury suffered by him. Therefore, under the head of loss of income, this Court enhances to Rs.50,000/- instead of Rs.30,000/- fixed by the Court below.

13. In the light of the above, this Court modified the award of the tribunal by enhancing the compensation as under:-



S. No.	Description	Amount awarded by the tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced or granted
1.	Partial permanent disability	1,20,000/-	1,38,000/-	Enhanced
2.	Pain and suffering	40,000/-	1,50,000/-	-
3.	Nutrition	20,000/-	50,000/-	Enhanced
4.	Attender	21,000/-	40,000/-	Enhanced
5.	Transport	5,000/-	10,000/-	Enhanced
6.	Loss of income	30,000/-	50,000/-	
	Total	2,36,000/-	4,38,000/-	By enhancing the amount of Rs.2,02,000/-

Since the appellant restricted his claim amount only to Rs.2,00,000/-, the enhanced amount arrived at by this Court is restricted to Rs.2,00,000/- The 2nd respondent-insurance company is directed to deposit compensation, as awarded by the Tribunal, after deducting the amount, if any, already paid to the claimant, within a period of four weeks from the date of receipt of a copy of this judgment. The claimant is entitled to withdraw his share without filing any formal application in the Tribunal.

14. The Insurance Company is directed to deposit the entire enhanced award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.291 of 2015 on the file of the Motor Accident Claims Tribunal Special Sub-Judge, Thanjavur, within a period of four weeks from the date of receipt of a copy of this judgment;

15. The Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the appellants-claimant, through RTGS/NEFT system, after getting their Account Details, within a period of four weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

Accordingly, this civil miscellaneous appeal is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)



To,

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Thanjavur.

2. The Divisional Manager,
United India Insurance Company Limited,
South Main Street,
Thanjavur District.

+1cc to M/S.K.Bhaskaran, Advocate SR.No. 88424

+1cc to M/S.A.Ilango, Advocate SR.No. 88760

judgment made in
C.M.A (MD) No. 606 of 2017
21.11.2017

ssm

JM/JC/SAR 1/07.02.2018/5P/5C