



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:19.09.2017
PRONOUNCED ON:21.11.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.760 of 2017

Selvam @ Selvakumar

... Appellant/Petitioner

Vs.

1.Senthil Selvam

2.The Manager,
Sriram General Insurance Company Limited,
No.66, 2nd Floor, City Centre Complex,
Thirumalaipillai Salai,
Chennai

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 07.02.2017 made in M.C.O.P.No.917 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Thanjavur.

For Appellant : Mr.K.Bhaskaran

For R-2 : Mr.D.Sivaraman

For R-1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award and decree dated 07.02.2017 made in M.C.O.P.No.917 of 2013 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 07.07.2013. The case of the injured/claimant before the Tribunal is that on the date of accident, when he was riding his two wheeler from west of Nadukaveri Union Bank to the east, the insured TATA ACE vehicle bearing Reg.No.TN.49 R 3457 came from opposite direction, in a rash and negligent manner and dashed against the two-wheeler bearing Reg.No.TN.49 AF 2679 and as a result, the injured/claimant sustained



a fracture in the right leg and on the right shoulder. It is stated that both of them are severe in nature. The injured was a driver and earning a sum of Rs.15,000/- per month.

3. Pursuant to the accident, the injured/claimant filed an application in M.C.O.P.No.917 of 2013, on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Thanjavur, seeking compensation.

4. Before the Tribunal, the injured/claimant examined one witnesses as P.W.1 and marked 10 documents as Exs.P.1 to P.10. On the side of the respondents, neither witness was examined nor documents were marked.

5. 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 appellant as well as the first respondent and fixed the negligence at 50:50 and directed the insurance company to pay 50% of the award amount arrived at by the tribunal.

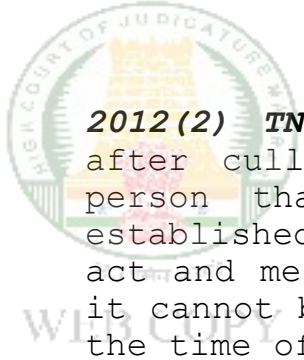
6. Questioning the contributory negligence as well as quantum of compensation, the present Civil Miscellaneous Appeal has been filed by the claimant.

7. The learned counsel appearing for the appellant submits that the Court below without any basis fixed 50% contributory negligence on the claimant for the reason that the claimant was in an alcoholic mood as well as he did not possess the driving license for riding the gear vehicle, 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 66 days as an inpatient, however, the Court below awarded only lesser compensation and therefore, prays for appropriate orders.

8. 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.

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

10. 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. In the said case, after culling out various decisions, it is held that to hold a person that he had contributed to the accident, it must be established by evidence that he had committed a 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 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. Further, in the case on hand, the Court below was of the view that the claimant was in an alcoholic mood and that is one of the reasons for fixing the contributory negligence on the claimant. According to the learned Judge, in the accident register, it is stated so. However, neither there is medical record placed to sustain that point nor evidence was marked on the side of the respondent to substantiate the said aspect to say that it is because of the claimant, who was in an inebriated condition, the accident had occurred. Therefore, applying the judgment stated supra, I come to the conclusion that fixing 50% liability on the claimant stand set aside and the first respondent vehicle alone is responsible for the accident occurred and the insurance company is liable to pay the total compensation.

11. Coming to the question of quantum of compensation, it is seen that the claimant had been in the hospital for atleast 66 days as inpatient and the treatment taking by the claimant is narrated in paragraph No.9 of the impugned judgment. Being a driver, he suffered severe injuries on his right leg and on his right shoulder, which are important parts of the body for carrying out his work. However, the Court below has awarded only Rs.50,000/- towards pain and sufferings, which is on the lower side. Since it is a case of permanent disability, this Court, under the head of pain and sufferings enhances the award to Rs.1,50,000/- from Rs.50,000/-. As far as the award granted under the head of permanent disability is concerned, it is quite reasonable and therefore, this Court confirms the award granted by the Court below under the said head. Further, under the head of nutrition only Rs.20,000/- is awarded. As stated earlier, he had been taking treatment for atleast 66 days as an inpatient and a lot of amount would have been spent to recover by providing nutritious food to the claimant. Therefore, this Court enhances to a sum of Rs.50,000/- under the head of nutrition from Rs.15,000/-. Similarly, this Court finds it just and reasonable to fix atleast Rs.50,000/- under the head of attender for the reason that the Court below itself has recorded that apart from taking treatment for 66 days, another four months are required for the claimant to take care of his health, for which, definitely, the attender help is required to help him. The other heads awarded by the Court below is just and reasonable and the same are confirmed by this Court.

12. In the light of the above, this Court modifies 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.	Permanent disability	90,000/-	90,000/-	-
2.	Pain and suffering	50,000/-	1,50,000/-	Enhanced
3.	Medial expenses	Nil	Nil	-
4.	Nutrition	15,000/-	50,000/-	Enhanced
5.	Treatment and rest during the period of treatment	30,000/-	30,000/-	-
6.	Attender	20,000/-	50,000/-	Enhanced
7.	Transport	7,000/-	7,000/-	-
8.	Loss of income	28,000/-	50,000/-	Enhanced
	Total	2,40,000/-	4,27,000/-	By enhancing the amount of Rs.1,87,000/-

13. In the light of the above, 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.917 of 2013 on the file of the Motor Accident Claims Tribunal cum special Judge, Thanjavur, within a period of **eight weeks** from the date of receipt of a copy of this judgment.

14. On such payment of amount, the Tribunal is directed to deduct the additional court fee to be paid by the claimant and transfer the remaining amount directly to the Personal Savings Bank Account Number of the Claimant, through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks thereafter**;

15. Accordingly, this civil miscellaneous appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/



To

The Judge, Motor Accidents Claims Tribunal/
Special Sub Judge, Thanjavur.

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Copy To:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 88425
+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 88429

SSM

TE/GT/SAR-3 : 21/12/2017 : 5P/5C

Judgment made in
C.M.A(MD) No.760 of 2017
21.11.2017