

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1739 of 2009

Manoharan

.. Appellant /Claimant

Vs.

1.R.Sathish Kumar

2.National Insurance Company Limited,
Vijaya Plaza Building II, Floor, C-32,
Second Avenue, Anna Nagar,
Chennai - 600 040.

3.G.Krishnammal

4.The New India Assurance Co.Ltd.,
96, Bharathiyar Street,
Sattur-626 203.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2009 made in M.C.O.P.No.423 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : M/s.C.Vidhusan

For R2 : Mr.J.Chandran

For R4 : Mr.S.Manohar

For R1 and R3 : No Appearance

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J U D G M E N T

This appeal arises out of the judgment and decree dated 30.01.2009 passed by the claims Tribunal in M.C.O.P.No.423 of 2006.

2.It is the case of the appellant/claimant that on 10.03.2006 at about 12.00 noon, when he was driving a Tata Sumo bearing Registration No.TN22-X-4001 from Theni to Chennai, a

lorry bearing Registration No.TN-67-3867 came in a rash and negligent manner from the opposite direction and dashed against the said Tata Sumo. Due to the said impact, the appellant/driver of the Tata Sumo lost his control and hit another lorry bearing Registration No.TN69-K-0204 which was going in front of the said Tata Sumo. As a result of the same, the appellant/claimant and the persons, who were travelling in the said Tata Sumo, had sustained severe injuries. Stating that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry bearing Registration No.TN-67-3867, the appellant/claimant filed a claim petition claiming a compensation of Rs.6,00,000/-.

3.The Tribunal, based on the oral and documentary evidence adduced by the parties, has come to the conclusion that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles and accordingly, fixed the contributory negligence at 50% each on them and ultimately, quantified the total compensation at Rs.1,29,000/- (wrongly stated as Rs.1,31,600/-) with interest at 7.5%pa from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant/claimant has preferred this appeal seeking enhancement of the same.

4.The learned counsel for the appellant/claimant submitted that without considering the materials and evidence available on record, the Tribunal has erred in fixing 50% contributory negligence on the appellant/claimant. He further submitted that the compensation awarded by the Tribunal is on the lower side and it needs considerable enhancement.

5.Per Contra, the learned standing counsel for respondents 2 and 4 submitted that the Tribunal, based on the witness account and materials on record, has rightly rendered its findings on negligence and awarded the just compensation and hence, the same do not call for any interference by this Court.

6.Heard all the parties and perused the materials available on record.

7.There is no dispute with regard to the factum of accident and involvement of three vehicles in the same. According to the appellant/claimant, who was the driver of Tata sumo, has deposed as P.W.2 before the Tribunal that the driver of the lorry bearing Regn.No.TN67 3867 was responsible for the accident. The testimony of P.W.2 was corroborated by Ex.P1 FIR. However, during the course of cross examination, P.W.2 stated that he tried to overtake the lorry which was going in front of the Tata Sumo, in the course of which, the accident was caused, due to the rash and negligent act on the part of the driver of the lorry bearing Regn.No.TN67 3867, which was coming from the

opposite direction. Taking note of the same, the Tribunal has observed that if the drivers of both the vehicles viz., Tata sumo and lorry were diligent in driving, the accident would not have been occurred. Accordingly, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles and accordingly, fixed the contributory negligence at 50% each on them, which this Court is not inclined to interfere.

8.As far as the quantum of compensation is concerned, the Tribunal has awarded Rs.66,000/- towards medical expenses, based on Ex.P13 medical bills, which is the actual expenses incurred for the treatment taken by the appellant/claimant and hence, the same is hereby confirmed. Further, there is no modification with regard to the award of Rs.10,000/- each towards transportation and extra nourishment.

9.However, the compensation awarded by the Tribunal towards other heads, viz., permanent disability and pain and suffering appears to be on the lower side, considering the materials and evidence adduced by the appellant/claimant. P.W.2 has stated in his deposition that he was 25 years old and was earning Rs.7,500/- per month as a driver; he sustained multiple and grievous injuries in all over body, besides receiving chest rib fracture and cut injury in right shoulder, left hand fingers, nose and fore head. Ex.P6 is wound certificate. Further, the medical reports marked through him would reveal that the appellant/claimant was taking treatment as inpatient at KMC Hospital, Trichy from 11.3.2006 to 29.03.2006 and at Stanley Hospital, Chennai from 30.04.2006 to 09.05.2006. P.W.3/doctor assessed his permanent disability at 42% and issued Ex.P15 disability certificate. But the Tribunal has taken only 40% permanent disability, which is quiet reasonable, in the opinion of this Court. P.W.3/doctor has also deposed about the nature of the injuries and impact of the same to the appellant/claimant. Having regard to those evidence and materials, this Court feels it just and reasonable to award Rs.1,500/- per percentage of disability. Accordingly, the compensation awarded by the Tribunal under the head "permanent disability" is enhanced from Rs.40,000/- to Rs.60,000/-, besides enhancing the award towards pain and suffering from Rs.3,000/- to Rs.25,000/-. That apart, taking note of the fact that no amount was awarded towards "attender charges" and "loss of income during treatment period", this Court is inclined to award Rs.5,000/- and Rs.24,000/- under those heads and the same are accordingly, awarded. Thus, the breakup details of the award passed by the Tribunal and the enhancement made by this Court are tabulated as follows:

SL. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Permanent disability	40,000/-	60,000/-
2.	Medical expenses	66,000/-	66,000/-
3.	Pain and Suffering	3,000/-	25,000/-
4.	Transportation Expenses	10,000/-	10,000/-
5.	Extra Nourishment	10,000/-	10,000/-
6.	Loss of income during treatment period	-	24,000/-
7.	Attender charges	-	5,000/-
	Total	Rs.1,29,000/-	Rs.2,00,000/-

10. In the result, this appeal is partly allowed. No costs. The award passed by the Tribunal is enhanced from Rs.1,29,000/- to Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of claim petition. The 2nd and 4th respondents / insurance companies are directed to deposit 50% of the enhanced compensation, after deducting 50% contributory negligence on the appellant/claimant, i.e., Rs.1,00,000/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the same to the Savings Bank Account of the appellant / claimant within a period of one week thereafter.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi/srk /rk

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

2.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 64722

+1cc to Mr.S.Manohar, Advocate, S.R.No. 64598

+1cc to Mr.Vidhusan, Advocate, S.R.No. 64448

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VBA (CO)
GN(12/03/2020)



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