

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1012 of 2018

G.Nandhakumar

.. Appellant/Claimant

Vs.

1.V.Karthikeyan

2.Royal Sundaram Alliance Insurance Co. Ltd.,
"Sundaram Towers",
No.45 & 46, Whites Road,
Chennai 14.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.02.2018, made in M.C.O.P.No.70 of 2014, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Vellore.

For Appellant : Mr.M.Sivakumar

For R1 : Mr.A.E.Ravichandran
for M/s.S.Dhanasekaran

For R2 : Mr.G.Vasudevan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the portion of the award fixing 50% negligence on the part of the appellant and seeking enhancement of the compensation granted by the award dated 06.02.2018, made in M.C.O.P.No.70 of 2014, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Vellore.

2.The appellant/claimant filed M.C.O.P.No.70 of 2014, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Vellore, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.09.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the appellant as well as the driver of the bus belonging to the 1st respondent, fixed 50% negligence on both of them, awarded a sum of Rs.2,94,911/- as compensation and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,47,456/- (50% of the award amount) as compensation to the appellant at the first instance and recover the same from the 1st respondent.

4.Challenging the portion of the award fixing 50% negligence on the appellant and not being satisfied with the amounts granted by the Tribunal in the award dated 06.02.2018, made in M.C.O.P.No.70 of 2014, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 50% contributory negligence on the part of the appellant. The Tribunal failed to see that FIR was registered against the driver of the bus and in the criminal proceedings, he has admitted guilt and paid fine. Without properly appreciating the above facts, the Tribunal erroneously fixed 50% contributory negligence on the ground that rough sketch was not marked. The appellant examined P.W.2-Doctor to prove the nature of injuries and disability suffered by him. The Tribunal without any reason reduced the percentage of disability from 45% to 35% and the amounts granted by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 50% contributory negligence on the appellant and enhancement of the compensation.

6.The learned counsel appearing for the 1st respondent, owner of the vehicle contended that the Tribunal has directed the 2nd respondent-Insurance Company to pay compensation. The 1st respondent, owner of the vehicle has insured the vehicle with the 2nd respondent and the insurance policy was in force at the time of accident. The Tribunal has erroneously directed the 1st respondent to pay the compensation. In the judgment, the Tribunal directed only the 2nd respondent to pay the compensation. But by mistake, in the copy of the decree, it was drafted such that the 2nd respondent was directed to pay the compensation at the first instance and recover the same from the 1st respondent. The 1st respondent filed a Review Petition before the Tribunal and the said Review Petition was allowed and the Tribunal corrected the copy of the decree and issued corrected copy of the decree, stating that the 1st respondent is not liable to pay any compensation. The compensation if enhanced has to be paid only by the 2nd respondent and prayed for dismissal of the appeal as against the 1st respondent.

7.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant was riding the two-wheeler without driving license and under the influence of alcohol. At the time of accident, he was in drunken mood and due to his negligence only the accident has occurred and the 2nd respondent marked Ex.R1, the accident register and proved that the appellant was under the influence of alcohol. The Tribunal considering the materials on record, fixed 50% contributory negligence on the appellant and total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant, 1st respondent as well as the 2nd respondent and perused the materials available on record.

9.From the materials on record, it is seen that the accident has occurred due to head on collusion of two-wheeler and bus. The FIR was registered against the driver of the bus who pleaded guilty and paid fine. The appellant examined himself as P.W.1 and deposed that the accident occurred only due to rash and negligent driving by driver of the bus belonging to the 1st respondent. The driver of the bus, R.W.1 deposed that the accident occurred only due to negligence on the part of the appellant. The 2nd respondent before the Tribunal contended that the accident has occurred due to negligence on the part of the appellant as he was under the influence of alcohol. The Tribunal considering the rival contentions wherein the appellant and driver of the bus blamed each other and accident was head on collusion and no rough sketch was filed on both sides, fixed negligence equally on the driver of the bus and appellant. The appellant was riding two-wheeler which is light motor vehicle compared to the bus belonging to the 1st respondent. The Tribunal is not correct in fixing 50% contributory negligence on the part of the appellant. The same is reduced to 20%.

10.As far as the contention of the learned counsel appearing for the 2nd respondent that the appellant was under the influence of alcohol at the time of accident and due to the same, the accident has occurred is concerned, the 2nd respondent has not produced any records other than the accident register. No blood test was conducted to prove that the appellant was under the influence of alcohol. In view of the same, the said contention is rejected.

11.As far as the quantum of compensation is concerned, the appellant has contended that he has taken treatment for three different periods for more than two years. P.W.2-Doctor certified that the appellant suffered 45% disability. The

Tribunal reduced the percentage of disability to 35% on the ground that the percentage of disability fixed by P.W.2-Doctor needs slight modification. The same is not correct. The appellant is entitled to a sum of Rs.1,35,000/- at the rate of Rs.3,000/- per percentage for 45% disability. The appellant filed Exs.P3 to P5, three discharge summaries issued by the Government Hospital, Vellore which shows that appellant has taken treatment as in-patient for 5 spells in various hospitals in Vellore and Chennai. The Tribunal has awarded a sum of Rs.35,000/- (Rs.5,000/- x 7) towards loss of income, which is meagre. This Court fixes a sum of Rs.7,500/- as monthly income of the appellant and awards a sum of Rs.1,80,000/- (Rs.7,500/- x 24) towards loss of income for 24 months. The Tribunal has granted a meagre sum towards extra nourishment and attender charges. Hence, a sum of Rs.20,000/- is granted towards extra nourishment and a sum of Rs.30,000/- towards attender charges. The Tribunal failed to grant any amount towards loss of amenities and a sum of Rs.25,000/- is granted towards the said head. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,05,000/-	1,35,000/-	Enhanced
2.	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Attender charges	5,000/-	30,000/-	Enhanced
6.	Loss of income	35,000/-	1,80,000/-	Enhanced
7.	Medical expenses	29,911/-	29,911/-	Confirmed

8.	Loss of amenities	-	25,000/-	Granted
	Total	2,94,911/- 50% of the award amount Rs.1,47,456/-	5,29,911/- 80% of the award amount Rs.4,23,928. 8/- rounded off to Rs.4,23,929/-	Enhanced by Rs.2,76,473/-

12. In the result, the appeal is partly allowed and compensation granted by the Tribunal at Rs.1,47,456/- is enhanced to Rs.4,23,929/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount 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, to the credit of M.C.O.P.No.70 of 2014 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. No costs. The appellant is directed to pay the necessary Court fee, if any for the amount now enhanced by this Court.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gsa

To

The Principal Subordinate Judge,
(Motor Accident Claims Tribunal),
Vellore.

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V.R. Section,
High Court, Madras.

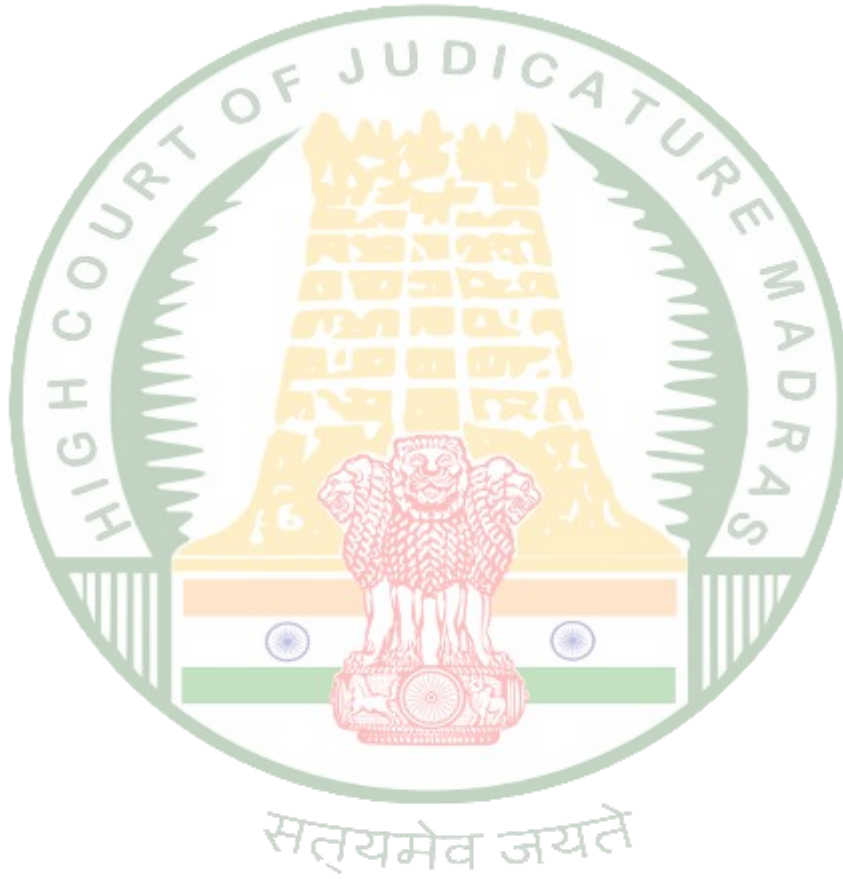
+1cc to Mr.S.Dhanasekaran, Advocate SR.No.41883

+1cc to Mr.C.Prabakaran, Advocate SR.No.42094

+1cc to Mr.G.Vasudevan, Advocate SR.No.42216

C.M.A.No.1012 of 2018

GJ(CO)
GMY(18/10/2019)



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