



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.557 of 2018

K.Maxwell

.. Appellant/Petitioner

Vs.

1. S.Lakshmi

2. Bharti Axa General Insurance Co. Ltd.,
Flat No.162, II Floor, Metro Plaza,
Anna Salai, Chennai 2.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.11.2017 and made in M.A.C.T.O.P.No.8155 of 2013, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr.K.Suryanarayanan

For R2 : M/s.K.Poomalai

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 14.11.2017 made in M.A.C.T.O.P.No.8155 of 2013, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.8155 of 2013, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.11.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the 1st respondent/driver-cum-owner of the car and appellant are responsible for the accident and fixed 75% negligence on the part of the driver of the car and 25% negligence on the part of the appellant, awarded a sum of Rs.40,000/- as compensation and directed the 2nd respondent-



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Insurance Company to pay 75% of the compensation awarded by the Tribunal ie., Rs.30,000/-. Challenging the 25% contributory negligence fixed on the part of the appellant and seeking enhancement of compensation the appellant has come out with the present appeal

3.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 25% contributory negligence on the part of the appellant. The Tribunal having held that the 1st respondent/driver of the car came from side road to take right turn to the main road and dashed against the motorcycle driven by the appellant. The Tribunal ought to have fixed entire negligence on the part of the 1st respondent/driver of the car. The Tribunal erroneously fixed 25% contributory negligence on the part of the appellant when the appellant proved that 1st respondent is solely responsible for causing the accident. The Tribunal erroneously rejected the disability certificate issued by P.W.2-doctor who is the qualified medical practitioner. The Tribunal ought to have applied multiplier method and ought to have awarded adequate compensation considering the nature of injuries sustained by the appellant and prayed for setting aside the 25% negligence fixed on the part of the appellant and for enhancement of compensation.

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the accident took place in the center of the main road and the Tribunal considering Ex.R1-rough sketch has held that the appellant and 1st respondent are responsible for the accident and fixed 25% negligence on the part of the appellant and 75% on the part of the 1st respondent. The injuries sustained by the appellant got cured completely and it was admitted by P.W.2-Doctor in his evidence that the appellant was admitted for only one day in the hospital and subsequently took conservative treatment. The Tribunal has rightly rejected Ex.P10-disability certificate. The appellant is not entitled for any enhancement. The compensation granted by the Tribunal is not meagre and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused the materials available on record.

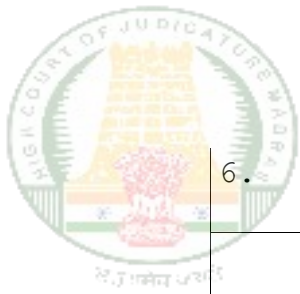
6.From the materials available on record, it is seen that the 1st respondent drove the car from side road and took right turn in main road. The appellant has rode his motorcycle in the main road. According to the appellant, the 1st respondent/driver of the car dashed against his motorcycle from behind. He has not produced Motor Vehicles Inspector's report to show that the motorcycle was damaged on the back side. Ex.R1-rough sketch



prepared by the police shows that the accident has occurred in the middle of the road. The Tribunal considering the place of accident, held that the appellant is also responsible for the accident and fixed 25% contributory negligence on the part of the appellant. There is no error in the reasoning of the Tribunal warranting interference by this Court.

7.As far as quantum of compensation is concerned, the contention of the learned counsel appearing for the appellant that the Tribunal erroneously rejected the disability certificate and the Tribunal ought to have awarded compensation for disability is without merits. In Ex.P3- OP chit issued by the Government Kilpauk Medical College Hospital, it has been stated that injuries sustained by the appellant is an undisplaced hairline fracture. P.W.2-Doctor admitted the same. Considering Exs.P3 and P9 and failure on the part of the appellant to file any discharge summaries, there is no error in the award of the Tribunal rejecting the disability certificate filed by the appellant. Considering the nature of injuries, the Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment and Rs.10,000/- towards loss of income for one month. The same are in order. Admittedly, the appellant sustained injuries and fractures. The Tribunal has not granted any amount towards loss of amenities, attendant charges and damages to cloth. Hence, a sum of Rs.10,000/-, Rs.3,000/- and Rs.2,000/- are granted towards loss of amenities, attendant charges and damages to cloth respectively. The amounts granted by the Tribunal under other heads are just and reasonable and the same are confirmed. Thus, the amounts granted 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.	Pain and Suffering	20,000	20,000	Confirmed
2.	Extra Nourishment	10,000	10,000	Confirmed
3.	Loss of Income for 1 month	10,000	10,000	Confirmed
4.	Loss of Amenities	-	10,000	Granted
5.	Attendant Charges	-	3,000	Granted



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6.	Damages to Cloth	-	2,000	Granted
	Total	40,000	55,000	Enhanced by Rs.11,250/-
	75% of the award amount	30,000	41,250	

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,000/- is hereby enhanced to Rs.41,250/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 75% of the enhanced award amount i.e., (Rs.41,250/-) along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rst/gbi

To

1. The VI Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.25208

+1cc to M/s.K.Poomalai, Advocate, S.R.No.25289

C.M.A.No.557 of 2018

SKV(CO)

CS/08/08/2019