

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.2614 of 2019

Tamilarasan

... Appellant/ Petitioner

Vs

1.Kannan

2.United India Insurance Co., Ltd.,

146N, Kumar Complex,

Annasalai,

Tiruchengode.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.03.2019 made in M.C.O.P.No.227 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.C.Paranthaman

For R1 : Exparte

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 04.03.2019 made in M.C.O.P.No.227 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Tiruchengode.

2.The brief facts is as follows:

On 05.01.2014 at about 8.00 P.M. the petitioner was riding the motorcycle bearing Reg.No.TN-34-M-5953 on the Maniyanoor to Gandhiasharam road from south to north on its left side. At that

time the rider of the Hero Honda Splender motorcycle bearing Reg.No.TN-34-0540 came in a opposite direction in a rash and negligent manner without blowing horn dashed against the petitioner's vehicle and caused the accident. Due to the said accident the petitioner sustained grievous injuries and fractures. Thus the petitioner claimed a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident.

3.The 2nd respondent/Insurance Company denied the mode of accident as alleged in the claim petition. The respondent/Insurance Company contended that the alleged accident caused injuries on the petitioner's left hand and also caused fracture in his right shoulder etc. The Insurance Company denied the fact that the petitioner was admitted as inpatient in Thirukumaran Hospital, Tiruchengode and still he is taking treatment as in-patient. It is contended that the 1st respondent, who ride the motorcycle is not responsible for the accident and denied that the petitioner was aged about 23 years, hale and healthy and earned Rs.10,000/- per month. Further contended that the petitioner had no driving license at the time of accident and the accident was occurred only due to rash and negligent driving of the petitioner, without knowing and observing motor vehicle rules, therefore the petitioner is only responsible for the accident and being the tortfeasor cannot claim compensation from the respondent for his own fault. The sum claimed by the petitioner is excessive in the absence of any proof.

4.The Tribunal upon analysing the contentions raised by both side by way of evidence and documents has given a finding that the accident was on fault at 50% on the appellant side and 50% on the driver of the 1st respondent vehicle and awarded a sum of Rs.2,72,688/- as compensation under the following heads:

Disability	Rs.30,000/-
Medical expenses	Rs.2,07,688/-
Pain and suffering	Rs.25,000/-
Extra nourishment	Rs.10,000/-
Total	Rs.2,72,688/-

Since the Tribunal has fixed 50% liability on the appellant, the appellant is entitled only a sum of Rs.1,36,344/- from the above compensation. Aggrieved against the said liability fixed by the Tribunal the claimant has preferred this appeal.

5. In the grounds of appeal, the appellant has contended that the Tribunal had given a finding that the accident occurred only due to rash and negligent act of the driver the Hero Honda Splendor bearing Reg.No.TN-34-K-5040 and awarded meagre amount as compensation which is against the established principles and rulings of the Hon'ble High Court as well as Hon'ble Supreme Court. Aggrieved against the said liability fixed by the Tribunal equally on the appellant and the sum awarded under other heads also very much aggrieved by stating that the assessment made by the Tribunal is very improper, inspite of the fact that the appellant was a final year student in Anna University at Coimbatore and he is only 23 years. Apart from that he was working as a part time computer instructor and was earning a sum of Rs.10,000/- per month. In view of the severe injuries sustained by him and prolonged treatment from 05.01.2014 to 21.01.2014 i.e. 16 days and the surgery underwent by him by fixing plates and screws, the disability assessed by the Tribunal could be excessive. Further contended that the Tribunal has awarded very meagre sum under the heads of pain & suffering and extra nourishment. Further contended that 50% of the contributory negligence fixed by the Tribunal on the part of the appellant is very much erroneous. Hence to set aside the 50% of contributory negligence on the part of the appellant and for enhancement of compensation he preferred the present appeal.

6. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mr.C.Paranthaman, learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

7. On perusal of the records, it is observed that the Tribunal has fixed the contributory negligence at 50% on the appellant, based on his own evidence who has clearly deposed before the Tribunal in the cross examination that "tpgj;jpw;F fhuzk; vd;Dila ftdf;FiwT vd;W nrhd;dhy; Mkhk;". The Tribunal considering the said deposition of the claimant has concluded that the appellant is also responsible for the accident. There is no error in the said finding of the Tribunal, but the percentage of contributory negligence fixed on the appellant is reduced to 20% from 50%.

8. While fixing the disability, the Tribunal has taken the entire disability at 10% by awarding Rs.3,000/- per percentage, has assessed by the Medical Board and awarded a sum of Rs.30,000/- towards disability which is very much proper and reasonable. It is argued by the learned counsel for the appellant that the appellant was a final year student in Anna University at Coimbatore and he is only 23 years and he also working as a part time computer instructor and was earning a sum

of Rs.10,000/- per month. Due to the said accident, he could not continue his work as he was doing before and hence there is huge loss of income. Though the learned counsel has argued on the point of loss of income, this Court is of the view that since the Tribunal has rightly taken the entire disability at 10% and awarded compensation under the head disability, awarding further amount under the head loss of income is not proper. In view of the disability suffered by the claimant which is only 10%. Hence, the argument of the appellant in this aspect cannot be considered. It is seen from the records that the appellant has taken treatment as an in-patient from 05.01.2014 to 21.01.2014 nearly 16 days. The Tribunal has not awarded any amount towards attendant charges and transportation charges, hence this Court grants a sum of Rs.10,000/- each under those heads. Since the sum awarded under other heads are properly considered by the Tribunal, the same does not require any modification. 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)
1.	Disability	Rs.30,000/-	Rs.30,000/-
2.	Medical expenses	Rs.2,07,688/-	Rs.2,07,688/-
3.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Transportation charges	-	Rs.10,000/-
6.	Attendant charges	-	Rs.10,000/-
	Total	Rs.2,72,688/- 80% of the award amount comes to Rs.1,90,881.6/-	Rs.2,92,688/- 80% of the award amount comes to Rs.2,34,150.4/-

9. In view of the modification, the compensation awarded by the Tribunal is enhanced from Rs.2,72,688/- to Rs.2,92,688/- and on discussed above the contributory negligence on the part of the appellant is reduced from 50% to 20%. Hence from the above modified amount, the appellant is entitled to a sum of Rs.2,34,150/- along with the interest at the rate of 7.5% per annum. In the result, this Civil Miscellaneous Appeal is partly allowed. No Costs.

10.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 80% of the enhanced award amount now determined by this Court i.e., Rs.2,34,150.4/- 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchengode.

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

+2ccs to Mr.C.Paraneedharan , Advocate SR.No. 65441
+1cc to Mr.C.Paranthaman , Advocate SR.No. 65334

C.M.A.No.2614 of 2019

A.SK(03/02/2020)