

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4729 of 2019

Ramu

.. Appellant/Claimant

Vs.

1.S.Ponnusamy

2.The Manager,
United India Insurance Company Limited,
595-B2/B3, SRS Towers,
Mettur Main Road,
Bhavani - 638 301. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.04.2018 made in M.C.O.P.No.498 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Erode District at Bhavani.

For Appellant : Mr.C.Kulanthaivel
For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.04.2018 made in M.C.O.P.No.498 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Erode District at Bhavani.

2. The appellant is the claimant in M.C.O.P.No.498 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Erode District at Bhavani. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.07.2016.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and fixed 10% negligence on the part of

the appellant for consumption of alcohol and not having valid driving license at the time of accident and 90% negligence on the part of the driver of the lorry and directed the second respondent-Insurance Company, being the insurer of the lorry to pay a sum of Rs.1,69,508/- towards 90% of the total compensation to the appellant.

4. Challenging the portion of the award fixing 10% contributory negligence on the part of the appellant and not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 10% contributory negligence on the part of the appellant based on the F.I.R., which was registered on the statement given by the pillion rider. The Tribunal failed to see that negligence has to be proved independently and not based on F.I.R. and Criminal proceedings. Negligence can be decided only based on the evidence let in before the Tribunal. The alleged Accident Register copy was not marked and Tribunal erred in relying on the Accident Register and fixed 10% negligence on the part of the appellant. The appellant sustained fracture in nasal bone, multiple facial lacerations, fractures of left side ribs No.2 to 7, fracture in left clavicle bone in shoulder, left mandible central incisor missing, loss of 4 tooth's and took treatment in the hospital as in-patient for 11 days from 19.07.2016 to 29.07.2016 and a surgery was conducted. The appellant produced Ex.P4/medical bills to show the amounts spent by him for the treatment. The Tribunal on assumption, rejected the portion of Ex.P4/medical bill. The Tribunal has not given any compensation for attendant charges and loss of amenities. The appellant was working as Coolie and was earning a sum of Rs.15,000/- per month. The monthly income fixed by the Tribunal is meagre. In view of the injuries sustained and disability suffered by the appellant, the Tribunal ought to have granted compensation by adopting multiplier method for loss of earning power. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of appeal.

6. Per contra, Mr.C.Paranthaman, learned counsel appearing for the second respondent-Insurance Company contended that the appellant was riding in his motorcycle after consuming alcohol, which is evidenced in the F.I.R. registered based on the complaint given by the pillion rider. In the Accident Register also, it is mentioned that appellant has consumed alcohol at the time of accident. The appellant was not wearing helmet and the Tribunal ought to have deducted 25% of compensation as per the judgment of this Court for not wearing helmet. The appellant has not proved that he suffered functional disability. The Medical

Board assessed disability of the appellant as 20%. The amounts awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the second respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that the pillion rider who lodged the complaint based on which F.I.R. was registered had stated that he and appellant consumed alcohol. The Tribunal has stated, in Accident Register also it is mentioned that appellant had consumed alcohol. But there is no evidence to show that appellant was intoxicated to such an extent that he could not drive his motorcycle properly. In the absence of any evidence that the appellant contributed negligence to the accident, deduction of 10% from total compensation is erroneous. At the same time, it is to be taken note of the fact that appellant was not wearing helmet at the time of accident. This Court held that for not wearing helmet, contributory negligence upto 25% can be fixed on the claimant and the 25% of compensation payable to the claimant has to be deducted. In view of non fixing contributory negligence and non-deduction of compensation for not wearing helmet, the contributory negligence at 10% fixed by the Tribunal is not interfered with.

9. As far as quantum of compensation is concerned, the appellant has not let in any evidence to show that he suffered functional disability. In the absence of evidence, the compensation awarded by the Tribunal following the percentage method to award compensation for disability is proper. The appellant is not entitled for compensation by applying multiplier method. The appellant has taken treatment in the hospital as in-patient for 11 days from 19.07.2016 to 29.07.2016 and the Tribunal has not granted any amount towards attendant charges and loss of amenities. The accident occurred in the year 2016. Therefore, a sum of Rs.20,000/- each is granted by this Court towards attendant charges and loss of amenities. The appellant has produced Ex.P4/medical bills to the sum of Rs.1,03,292/- for having spent for medical expenses. The respondents have not let in any evidence to disprove the said contention. The Tribunal erred in rejecting portion of Ex.P4/medical bills on the ground that P.W.2/Doctor could not explain the questions raised by the second respondent. The said reasoning is erroneous when the bills produced by the appellant were not disproved. The appellant is entitled for the entire amount as per Ex.P4/medical bills. The compensation awarded by the Tribunal under other heads are just and reasonable and hence they are confirmed by this Court. 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	60,000/-	60,000/-	Confirmed
2.	Pain and suffering	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Medical expenses	65,342/-	1,03,292/-	Enhanced
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of income	18,000/-	18,000/-	Confirmed
7.	Attendant charges	-	20,000/-	Granted
8.	Loss of amenities	-	20,000/-	Granted
	Total	Rs.1,88,342/-	Rs.2,66,292/-	
	90% of compensation	Rs.1,69,508/-	Rs.2,39,662.8 rounded off to Rs.2,39,663/-	enhanced by Rs.70,155/-

10% of negligence fixed by the Tribunal on the part of the appellant is hereby confirmed and 90% of the total award amount comes to Rs.2,39,663/-.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the 90% compensation awarded by the Tribunal at Rs.1,69,508/- is hereby enhanced to Rs.2,39,663/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, 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.498 of 2016 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Erode District at Bhavani. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that the appellant shall not be entitled to any interest for the delay period in filing the

appeal on Rs.70,155/-, the amount now enhanced by this Court as per the order of this Court dated 11.11.2019 made in C.M.P.No.17473 of 2019 in C.M.A.(SR)No.101356 of 2019. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional District Judge,
Motor Accident Claims Tribunal,
Bhavani,
Erode District.

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

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 104425

+1cc to Mr.C.Paranthaman , Advocate SR.No. 104252

C.M.A.No.4729 of 2019

A.SK(26/08/2020)

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