

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.891 of 2010

D.Murugan

...Appellant/Claimant

Vs

1.V.Murugesan

2.S.Ramalingam

3.The New India Assurance Company Ltd.,
No.375, Anna Salai, Canara Bank, II Floor,
Saidapet, Chennai-600 015.

4.IFFCO-TOKIO General Insurance Co. Ltd.,
Tulsi Chamber, III Floor,
No.195, T.V. Samy Road (West),
R.S. Puram,
Coimbatore-641 002
(R4-Given up as he remained Ex-parte
before Tribunal).

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.I), Erode in M.C.O.P.No.275 of 2008 dated 21.07.2009.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : No Appearance
Nos.1 & 2

For Respondent-3 : Mr.M.Krishnamoorthy

JUDGMENT

As against the finding of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.I), Erode in M.C.O.P.No.275 of 2008 dated 21.07.2009, in fixing contributory negligence on the appellant/driver and for enhancement of compensation, the present appeal has been filed by the appellant/claimant.

2.The brief facts leading to the filing of the present appeal is as follows:

a)On 29.06.2006, when the appellant was riding his TVS XL Moped bearing registration No.TN.30-U-4421, insured with the fourth respondent herein from Vaikundam with a pillion rider, a van bearing registration No.TN-22-A1-9443 belonging to the respondents 1 & 2 herein, insured with the third respondent, which came in a rash and negligent manner from Sankari hit the Moped, in which, the appellant and the pillion rider sustained grievous injuries.

b)The Tribunal, after analysing the oral and documentary evidence, has held that the accident had occurred due to the rash and negligent driving of both the drivers and held that due to contributory negligence of the appellant, he was entitled to receive 50% of the compensation amount and directed the insurer of the Van/ third respondent herein, to pay 50% of the compensation amount to the appellant/claimant.

c)The learned Additional District Judge/Fast Track Court No.I, Erode had passed the following award on 21.07.2009:-

Heads	Amount awarded
Pain, Sufferings & Mental agony	Rs.25,000/-
Transportation & Extra Nourishment	Rs.5,000/-
Medical Expenses	Rs.31,000/-
Permanent Disability	Rs.20,000
Loss of Income	Rs.2,000/-
Total	Rs.83,000/-

Thus, directing the third respondent herein to pay the appellant a sum of Rs.41,500/- together with interest at 7.5% from the date of claim till the date of realization as compensation.

3.Aggrieved by fixation of 50% liability on the appellant and quantum of compensation awarded by the Tribunal, the present appeal has been filed seeking enhancement of compensation.

4.Heard Mr.S.Kathaimalai Kumaran, learned Counsel for the appellant and Mr.M.Krishnamoorthy, learned Counsel appearing on behalf of the third respondent/Insurance Company.

5.According to the learned counsel for the appellant, the Tribunal under the impugned award has erroneously assessed the monthly salary of the injured at Rs.2,000/-. According to him, the appellant was carrying on hotel business at the time of the accident and was earning a monthly salary of more than

Rs.8,000/- per month, but the Tribunal without any basis has assessed his monthly salary at Rs.2,000/-.

6.The learned counsel for the appellant further contended that the amount awarded by the Tribunal under transport and extra nourishment are on a lower side. He further submitted that the amount awarded towards permanent disability is not a just and reasonable, as the appellant had sustained fracture at left high and left wrist and could not able to carry on his business after the accident.

7.The learned counsel for the appellant submitted that without proper appreciation of evidence, the Tribunal had fasten 50% liability on the appellant and awarded 50% compensation to him, which needs interference and also pleaded for enhancement of compensation under other heads.

8.Per contra, the learned counsel for the third respondent submitted that the compensation awarded by the Tribunal is just and reasonable and warrants no interference.

9.Considering the materials available on record, having examined the impugned award and having heard the submissions of the respective counsels, this Court is of the view that as the appellant was carrying on hotel business at the time of accident, though there is no document to support his income, it would be appropriate to fix his monthly income at Rs.3000/- instead of Rs.2000/- fixed by the Tribunal. It is evident from the records that the appellant had taken treatment in the hospital as inpatient for 45 days, this Court feels that due to the said injuries, he would have not gone to work for 6 months, a sum of Rs.18,000/- (Rs.3000/- x 6) can be granted towards loss of income. Further, a sum of Rs.5000/- has been awarded towards attendant benefits, as he was inpatient for 45 days in the hospital and sum of Rs.2000/- has been granted towards transportation separately. Even though the Court below has come to the conclusion that the appellant/claimant has contributed for the said accident and fixed 50% liability on him, which is on the higher side in the absence of any evidence produced by the third respondent/Insurance company, this Court is inclined to reduce the liability from 50% to 25%. Thus, the amount awarded by the Tribunal has been modified to the following effect:

Heads	Amount Awarded
Pain, Sufferings & Mental agony	Rs.25,000/-
Extra Nourishment	Rs.5,000/-
Transportation	Rs.2000/-

Heads	Amount Awarded
Medical Expenses	Rs.31,000/-
Attendant Benefits	Rs.5000/-
Permanent Disability	Rs.20,000
Loss of Income (for 6 months i.e., 3000x6=18,000)	Rs18,000/-
Total	Rs.1,06,000/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the award dated 21.07.2009 passed by the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.I), Erode in M.C.O.P.No.275 of 2008, is hereby modified from Rs.83,000/- to Rs.1,06,000/- and that by fixing the liability at 25% on the appellant/claimant (reduced from 50% to 25%), the third respondent/Insurance Company is directed to pay the claimant/appellant a sum of Rs.79,500/- (as the liability is fixed at 75% on them by this Court) instead of Rs.41,500/- awarded by the Tribunal. The third respondent is directed to deposit the enhanced amount to the credit of M.C.O.P.No. 275 of 2008, on the file of the Motor Accident Claims Tribunal (Additional District Judge cum Fast Track Court No.I), Erode, together with interest 7.5% per annum from the date of claim till the date of deposit within a period of three weeks from the date of receipt of this order. On such deposit being made, the appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Motor Accident Claims Tribunal,
(Additional District Judge cum Fast Track Court No.I),
Erode.

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

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+lcc to Mr.A.K.Kumarasami, Advocate, S.R.No.4167
+lcc to Mr.M.Krishnamoorthy, Advocate, S.R.No.4461

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SJ(CO)
CB(19/04/2021)



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