



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1519 of 2013

Ravi

... Appellant

Vs.

1.K.Ponnusamy

2.The Branch Manager,

The New India Assurance Co. Ltd.,

Door No.12, Gobi Town,

Erode District.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.09.2009 made in M.C.O.P.No.277 of 2008 on the file of Motor Accident Claims Tribunal, I Additional Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.J.Chandran
for R2
R1 - dispensed with

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant seeking enhancement of compensation granted by the Tribunal in the award dated 02.09.2009 made in M.C.O.P.No.277 of 2008 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Gobichettipalayam.

2.The appellant is the claimant in M.C.O.P.No.277 of 2008 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Gobichettipalayam. He filed the said claim petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.07.2008.



3. The case of the appellant is that on 06.07.2008, at about 03.30 PM, the appellant was riding a Bajaj bike. At that time, an Ambassador Car, which was driven by the first respondent in a rash and negligent manner without observing any road traffic rules, dashed against the appellant's bike and the appellant was thrown on the right side of the road. Due to the said incident, the appellant sustained grievous injuries all over his body.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent act of both the appellant and the driver of the Ambassador car belonging to the 1st respondent and fixed 25% contributory negligence on the part of the appellant and 75% on the part of the driver of the lorry belonging to the 1st respondent and awarded a sum of Rs.2,12,398/- as compensation. Subsequently, the Tribunal directed both the 1st respondent as well as the 2nd respondent-Insurance Company, who is the insurer of the said Ambassador Car, to pay jointly and severally a sum of Rs.1,59,299/- i.e., 75% of Rs.2,12,398/- as compensation to the appellant. The appellant has come out with the present appeal challenging the portion of award fixing 25% contributory negligence on him as well as seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 25% contributory negligence on the part of the appellant. The accident is only due to the sole negligent act on the part of the driver of the car. The Tribunal has not considered Ex.P2/sketch in proper manner and the Tribunal erred in fixing contributory negligence on the part of the appellant. The Tribunal rightly applied multiplier method for awarding compensation towards disability. The Tribunal has not awarded any amount towards transportation charges, future medical expenses and loss of income. The total compensation awarded by the Tribunal is meager and prayed for setting aside the portion of the award fixing 25% contributory negligence on the part of the appellant and for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant drove the motorcycle under the influence of alcohol and caused accident. The learned counsel further contended that the appellant did not possess a valid driving license at the time of the accident. In any event, the total amounts awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal.



7. Heard Mr. Ma. P. Thangavel, learned counsel for the appellant and Mr. J. Chandran, learned counsel appearing for the second respondent.

WEB COPY

8. From the materials available on record, it is seen that P.W.1/ appellant in his evidence has deposed that while he was riding his motorcycle, the driver of the car belonging to the 1st respondent drove the same in a rash and negligent manner, dashed against his motorcycle and caused the accident. On the other hand, the 2nd respondent/Insurance Company has not let in any evidence to prove their contention that the appellant was under the influence of alcohol. The Tribunal, considering the nature of the accident, was right in fixing 25% contributory negligence on the part of the appellant and hence, the same is liable to be upheld.

9. A perusal of the records shows that the claimant has sustained fracture on left leg and multiple injuries all over the body. Dr. Thambiraj (PW2) has assessed the partial permanent disability as 33% and the Tribunal has reduced the same to 25%. It is seen that the appellant was working as a Lorry Driver and earning a sum of Rs.9,000/-, for which no evidence has been produced by the appellant. The Tribunal has fixed Rs.3,000/- towards "monthly income". The tribunal has fixed the permanent disability as 25%. Hence, it is seen that 25% in Rs.3,000/- is Rs.750/- Accordingly, the loss of income for the year Rs.750/- X 12 = 9,000/-. At the time of accident, the appellant was aged about 26 years. Hence, the proper multiplier would be 18 and awarded a sum of Rs.1,62,000/- (9,000 X 18), which is very correct and the same is hereby confirmed. After perusing the medical bills and receipts, the Tribunal has rightly awarded a sum of Rs.40,398/- towards "medical expenses" and this Court is not inclined to interfere with the same. The Tribunal has awarded a sum of Rs.5,000/- each towards "pain and suffering" and "nutrition" and the same are hereby confirmed. The Court below has not awarded any amount towards "transportation" and "attender charges". Considering the expenditure that the appellant might have incurred for travelling to the Hospital, this Court grants a sum of Rs.5,000/- each towards the same. The award passed by this Court under various heads is extracted hereunder:



WEB COPY

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability and Loss of Income	1,62,000/-	1,62,000/-	confirmed
2.	Medical Bills	40,398/-	40,398/-	confirmed
3.	Nutrition	5,000/-	5,000/-	confirmed
4.	Pain and suffering	5,000/-	5,000/-	confirmed
5.	Transportation	---	5,000/-	awarded
6.	Attendant charges	---	5,000/-	awarded
	Total	2,12,398/-	2,22,398/-	enhanced by Rs.10,000/-

10.The Court below has fixed the award amount under various heads at Rs.2,12,398/- and after deducting 25% towards contributory negligence, has awarded a sum of Rs.1,59,299/- payable by the Insurance Company. The said finding of contributory negligence having been found justified by this Court, the amount awarded by this Court at Rs.2,22,398/- would also be subject to 25% deduction under the head contributory negligence. Accordingly, deducting 25% towards contributory negligence, this Court awards a sum of Rs.1,66,798 [Rs.2,22,398/- (-) Rs.55,600/-]

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,59,299/- is hereby enhanced to Rs.1,66,798/-, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are directed to pay a sum of Rs.1,66,799/- jointly and severally to the appellant on



the enhanced award amount. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are 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. 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. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sbn
To

1.The Motor Accident Claims Tribunal,
I Additional Subordinate Judge,
Gobichettipalayam.

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

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.3791

C.M.A.No.1519 of 2013

rld[col
srg 06/01/2022