

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1810 of 2013

Natarajan

...Appellant/Petitioner

vs.

1.U.Vasu

2.M.Meganathan

3.The United India Insurance Company Ltd.,
Madras.

(1st and 2nd respondents set exparte before Tribunal)

.... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the judgment and decree dated 18.03.2003 made in M.C.O.P.No.263 of 2002 on the file of Motor Accidents Claim Tribunal, Additional District & Sessions Judge, F.T.C. Vellore and enhance the compensation from Rs.38,400/- to Rs.1,50,000/- and allow the C.M.A.

For Appellant : Mr.C.Prabakaran

For Respondents : R1 & R2 - Exparte

Mr.M.J.Vijayaraghavan for R3

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the claimant challenging the Award dated 18.03.2003 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Judge, F.T.C, Vellore) in M.C.O.P. No.263 of 2002.

2. Heard Mr.C.Prabakaran, learned counsel for the petitioner and Mr.M.J.Vijayaraghavan, learned counsel for the third respondent. The first and second respondents remained exparte both before the Tribunal as well as this Court.

3. The appellant has sought for enhancement of compensation under the impugned Award and he has also challenged the adverse finding of contributory negligence on his part at 20% by the Tribunal.

4. The appellant / claimant sustained the following injuries (a) left thigh injury and (b) right leg injury as a result of the accident. He preferred a claim before the Motor Accident Claims Tribunal, seeking compensation for the injuries sustained by him.

5. The details of the Award passed by the Tribunal under the impugned Award are as follows:

Towards pain and suffering	- Rs.10,000/-
Towards transport to hospital	
extra nourishment and attendants etc.,	- Rs.3,000/-
Towards permanent disability fixed at 25%-	Rs.25,000/-
Towards loss of earning and earning power-	Rs.10,000/-

Total	Rs.48,000/-

6. The Tribunal has also fixed 20% contributory negligence on the part of the appellant/claimant and therefore, the Tribunal has directed the respondents to pay Rs.38,400/- as compensation to the appellant/claimant after adjusting the proportionate sum towards 20% contributory negligence on the part of the appellant/claimant.

7. Aggrieved by the adverse finding of 20% contributory negligence on the part of the appellant/claimant and also aggrieved by the quantum of compensation fixed by the Tribunal, this appeal has been preferred by the claimant.

8. This Court is of the view that the appellant/claimant having not sustained any fracture as a result of the accident is not entitled for any enhancement of compensation. The Tribunal has awarded Rs.10,000/- towards pain and suffering, Rs.3,000/- towards transportation cost, extra nourishment and attender charges etc, Rs.25,000/- towards permanent disability based on 25% disability assessed by the Doctor and Rs.10,000/- towards loss of earning and earning power which in the considered view of this Court is a just compensation, considering the fact that the year of the accident was 1997. Therefore, the contention raised by the appellant/claimant that the compensation awarded by the Tribunal is inadequate, does not deserve any merit and cannot be accepted by this Court.

9. Insofar as the second contention raised by the appellant/claimant with regard to the fixation of 20% contributory negligence is concerned, this Court is of the

considered view that without any basis and without any evidence, the Tribunal has fixed 20% contributory negligence on the part of the appellant/claimant. The claimant was driving a cycle when the insured vehicle dashed against the said Cycle which resulted in injuries to the appellant/claimant. F.I.R (Ex.A1) has also been registered only against the insured vehicle and not against the appellant/claimant. The documents which were marked as exhibits before the Tribunal also does not establish any contributory negligence on the part of the appellant/claimant. There must be evidence available to establish contributory negligence on the part of the appellant. But in the case on hand, there is no such evidence whatsoever. Therefore, the finding of 20% contributory negligence on the part of the appellant is an erroneous finding given by the Tribunal. Accordingly, the said finding is hereby set aside by this Court.

10. In the result, the appeal is partly-allowed by setting aside the finding of the Tribunal, that the appellant/claimant is liable for 20% contributory negligence and the respondents are directed to deposit the entire compensation amount of Rs.48,000/- assessed by the Tribunal together with interest at 7.5 % per annum, which is settled practice instead of 9% per annum fixed by the Tribunal from the date of claim till the date of deposit within a period of four weeks from the date receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellant before receiving the copy of this Judgment. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Pns

To

- 1.The Motor Accident Claims Tribunal,
Additional District & Sessions Judge, F.T.C.
Vellore.
- 2.The Section Officer,
Vernacular Section,
Madras High Court.

+lcc to Mr.C.Prabakaran, Advocate, sr no.27976

C.M.A.No.1810 of 2013

BS (CO)

RMP (10/05/2021)