

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.2256 OF 2013

Selvam @ Selvaraj

... Appellant/Petitioner

Vs

1. R.Rajee

2. The New India Assurance Company Ltd.,
Divisional Office,
Premier Complex, Five Roads,
Salem - 4.

... Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 (1) of the Motor Vehicles Act, 1988, against the judgment and award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem in M.C.O.P.No.561 of 2008 dated 03.10.2011.

For Appellant : Mr.K.Kuppuswamy

For Respondents : Mr.P.G.Padmanabhan for R2
R1 - Exparte

J U D G M E N T

As against the finding of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem in M.C.O.P.No.561 of 2008 dated 03.10.2011 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:

On 24.08.2005 at 12 Midnight, the appellant was travelling as a pillion rider in a motor cycle bearing No.TN-45-Q-3583 along with a rider, near Santham Complex in the Saradha College Main Road, at that time, the 1st respondent's vehicle bearing registration No.TN-29-A-5211 came from five roads towards Hasthampatty in a rash and negligent manner and hit the appellant's motor cycle directly. Due to the accident, the

appellant sustained severe fracture injuries all over the body and he was immediately admitted in the Gokulam Hospital at Salem for treatment and has spent more than Rs.30,000/- for his medical expenses. Therefore, the appellant has filed a claim petition claiming a sum of Rs.10,00,000/- as compensation.

3. Per contra, the 2nd respondent has filed a counter denying all the averments in the claim petition and submitted that it is only the rider of the motor bike bearing regn.No.TN-45-Q-3583 had driven the bike in a rash and negligent manner, thereby invited the accident. The driver of the 1st respondent had driven the vehicle in a slow and cautious manner and the appellant being a pillion rider is not at all entitled to any compensation. Further, as per the contents of the FIR, the accident had happened only at 10 P.M., however, the appellant had mentioned that the accident had happened at 12.00 p.m., hence seeks to dismiss the claim petition.

4. 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 60% of the compensation amount and directed the insurer of the Van/ 2nd respondent herein, to pay 60% of the compensation amount to the appellant/claimant.

5. The Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem in M.C.O.P.No.561 of 2008 dated 03.10.2011 had passed the following award :-

Heads	Amount awarded
25% disability	Rs.30,000/-
Medical Expenses	Rs. 3,000/-
Loss of earning for one month	Rs. 4,000/-
Nutrition Expenses	Rs. 3,000/-
Pain and Sufferings and Mental agony	Rs. 7,000/-
Transportation Expenses	Rs. 2,000/-
Total	Rs.49,000/-

Thus, directed the 2nd respondent herein to pay the appellant a sum of Rs.29,400/- together with interest at 7.5% from the date of claim till the date of realization as compensation.

6. Aggrieved by fixation of 40% liability on the appellant and quantum of compensation awarded by the Tribunal, the present appeal has been filed seeking enhancement of compensation.

7. Heard Mr.K.Kuppuswamy, learned Counsel for the appellant and Mr.P.G.Padmanabhan, learned Counsel appearing on behalf of the 2nd respondent/Insurance Company.

8. According to the learned counsel for the appellant, the Tribunal under the impugned award has erroneously awarded a sum of Rs.29,400/-, which is a meager amount and the Tribunal failed to see the Exhibits, 2,3,10 and 11 and the treatment undergone by the appellant. According to him, the appellant had sustained 35% disability, but the Tribunal erred in concluding that the appellant had sustained only 25% disability.

9. 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 right leg and could not able to carry on his business after the accident.

10. The learned counsel for the appellant submitted that without proper appreciation of evidence, the Tribunal had fasten 40% liability on the appellant and awarded 60% compensation to him, which needs interference and also pleaded for enhancement of compensation under other heads.

11. Per contra, the learned counsel for the 2nd respondent submitted that the compensation awarded by the Tribunal is just and reasonable and warrants no interference.

12. Considering the materials available on record, having examined the impugned award and having heard the submissions of the respective counsels and taking into consideration of the evidence given by the Doctor, Ex.P.3, wherein he had stated that the appellant had suffered fracture in the right leg and multiple fractures in the fingers in both the legs and suffered 36% permanent disability, this Court is of the opinion that the appellant would have definitely sustained 30% disability, hence it would be appropriate to fix the disability as 30%, hence by awarding Rs.2,000/- per percentage, a sum of Rs.60,000/- is awarded towards 30% disability.

13. That apart, a sum of Rs.3,000/- ; Rs.7,000/- and Rs.2,000/- awarded by the Tribunal under the Heads, Nutrition Expenses, pain and sufferings and Mental Agony and Transportation respectively are very meager, and the same are enhanced, thereby a sum of Rs.5,000/- each are hereby awarded under the Heads, viz., Extra Nourishment and Transportation expenses and except the aforesaid heads, the amount awarded by the Tribunal under all the above heads stand confirmed.

14. Further, the Tribunal failed to award amount towards attender charges, taking note of the injuries and fracture suffered by the appellant, definitely, a person would have accompanied him to carryout his day today activities, therefore, a sum of Rs.5,000/- is hereby awarded towards the Attenders charges. Even though the Court below has come to the conclusion that the appellant/claimant has contributed for the said accident and fixed 40% liability on him, which is on the higher side, in the absence of any evidence produced by the 2nd respondent / Insurance company, this Court is inclined to reduce the liability from 40% to 30%.

Thus, the amount awarded by the Tribunal has been modified to the following effect:

Heads	Amount Awarded
Disability @ 30% X 2,000/-	Rs.60,000/-
Medical Expenses	Rs. 3,000/-
Extra Nourishment charges	Rs. 5,000/-
Loss of earning per month	Rs. 4,000/-
Transportation charges	Rs. 5,000/-
Pain and sufferings and mental agony	Rs.10,000/-
Attendant Benefits	Rs. 5,000/-
Total	Rs.92,000/-

15. In the result, the Civil Miscellaneous Appeal is partly allowed and the award dated 03.10.2011 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem in M.C.O.P.No.561 of 2008 is hereby modified from Rs.49,000/- to Rs.92,000/- and that by fixing the liability at 30% from 40% on the appellant/claimant, the respondents jointly or severally directed to pay the claimant/appellant a sum of Rs.64,400/- instead of Rs.29,400/-. The 2nd respondent is directed to

deposit the enhanced amount to the credit of M.C.O.P.No.561 of 2008, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Salem, 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(CO-MDU)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Motor Accident Claims Tribunal,
Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Salem.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.P.G.Padmanabhan, Advocate, S.R.No.12237

C.M.A.No.2256 of 2013

CS/15/10/2020

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