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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1677 of 2016

V.Arul ... Appellant/Petitioner

Vs.

1.D.Suriya Babu

(R1 remained exparte before Tribunal.
Hence, notice dispensed with)

2.The Branch Manager,
Oriental Insurance Company Limited,
HUB, 3rd Party Claim, Vijayalakshmi Complex 1st floor,
No.32/312, 13th Street, Phase II,
Sathuvachari, Vellore. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.06.2016 made in M.C.O.P.No.25 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant : Mr.C.Munusamy

For R2 : Mr.S.Arun Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging 70% of contributory negligence fixed on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 10.06.2016 made in M.C.O.P.No.25 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi.

2.The appellant is the claimant in M.C.O.P.No.25 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.12.2011.



3. According to appellant, on 07.12.2011 at about 16.30 hours, while he was riding his motorcycle on Vaniyambadi-Krishnagiri road near Jeeva Nagar Koottu Road, the driver of the mini lorry belonging to the 1st respondent drove the same in a rash and negligent manner, came in the opposite direction and dashed against the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and admitted in the Government Hospital, Vaniyambadi. At the time of accident, the appellant was aged 32 years and was working as an Agricultural Coolie and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by him in the accident, he could not able to do the work as he was doing earlier. Therefore, he filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

4. The 1st respondent, owner of the mini lorry remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. The 2nd respondent-Insurance Company denied the nature of injuries sustained by the appellant and also the nature of accident. The accident has occurred only due to negligence on the part of the appellant. The appellant without possessing valid driving license, drove the vehicle, lost his balance and invited the accident. Therefore, contributory negligence has to be fixed on the part of the appellant. The mini lorry belonging to the 1st respondent was not insured with the 2nd respondent-Insurance Company. The driver of the 1st respondent's mini lorry, who drove the vehicle at the time of accident was not possessing valid driving license. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. The appellant has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the appellant is exorbitant and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.P.G.Elangovan was examined as P.W.2 and 18 documents were marked as Exs.P1 to P18. On behalf of the respondents, 4 witnesses were examined as R.W.1 to R.W.4 and 7 documents were marked as Exs.R1 to R7 and Authorization letter and statement of accounts and consolidated receipts of CMC Hospital was marked as Ex.X1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the mini lorry



belonging to the 1st respondent and fixed 70% contributory negligence on the part of the appellant for not possessing valid driving license at the time of accident and 30% negligence on the part of the driver of the mini lorry belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the mini lorry to pay a sum of Rs.2,63,965/- towards 30% of the award amount as compensation to the appellant.

8.Questioning 70% contributory negligence fixed on the part of him and not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 70% contributory negligence on the part of the appellant on the ground that appellant did not possess valid driving license. The appellant has let in both oral and documentary evidence to prove that accident has occurred only due to rash and negligent driving by the driver of the mini lorry belonging to the 1st respondent. The 2nd respondent-Insurance Company has not examined the driver of the mini lorry or any other eye-witness to disprove the evidence of the appellant. The appellant was working as agricultural coolie and was earning a sum of Rs.10,000/- per month but, the Tribunal fixed a meagre sum of Rs.6,000/- per month as notional income of the appellant. The appellant examined P.W.2/Doctor, who certified that appellant suffered 73% disability but the Tribunal without giving any valid reason, reduced the same to 60% and awarded compensation only for 60% disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 70% contributory negligence on the part of the appellant as well as for enhancement of compensation.

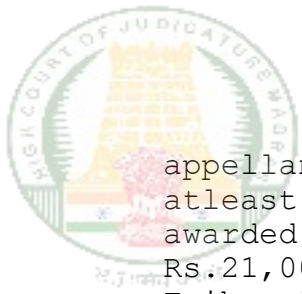
10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant did not possess driving license and he was under the influence of alcohol at the time of accident. The Tribunal considering the above materials, fixed contributory negligence on the part of the appellant at 70%. The appellant has not produced any material evidence to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the notional income fixed by the Tribunal at Rs.6,000/- per month is not meagre and the amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.



12. It is the contention of the appellant that while he was riding his motorcycle slowly and cautiously observing the road rules, the driver of the mini lorry belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the appellant and caused the accident. To substantiate the same, the appellant examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the mini lorry belonging to the 1st respondent. To disprove the evidence of P.W.1 and Ex.P1/F.I.R., the 2nd respondent-Insurance Company has not examined the driver of the mini lorry or any other eye-witness. In view of the same, the 2nd respondent-Insurance Company failed to prove that appellant has contributed for the accident. The Tribunal erroneously fixed contributory negligence on the part of the appellant at 70% on the ground that the appellant did not possess driving license at the time of accident. It is for the opposite party to prove that the appellant also contributed to the accident. In view of the same, the reason given by the Tribunal for fixing 70% contributory negligence on the part of the appellant is erroneous. Even if a person was not possessing driving license at the time of accident, it is for the opposite party to prove that the said person was responsible for the accident and also contributed for the accident. In the present case, there is no evidence to hold that appellant was also negligent and responsible for the accident. In the absence of any material evidence to prove that appellant also contributed to the accident, fixing 70% contributory negligence on the part of the appellant by the Tribunal is liable to be set aside and it is hereby set aside.

13. As far as quantum of compensation is concerned, the appellant was aged 32 years and was working as an Agricultural Coolie and was earning a sum of Rs.10,000/- per month. The appellant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the appellant. The accident occurred in the year 2011 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.7,000/- per month including future prospects is fixed as notional income of the appellant. P.W.2/Doctor assessed that the appellant suffered 73% disability and the appellant also filed Ex.P15/Government disability certificate showing that the appellant suffered 60% disability. The Tribunal accepted Ex.P15 and adopted multiplier method in awarding compensation towards disability and there is no error in the said finding. Thus, the compensation awarded by the Tribunal towards loss of future earning capacity is modified to Rs.8,06,400/- [Rs.7,000/- X 12 X 16 X 60/100]. Considering the nature of injuries and period of treatment taken by the



appellant, the appellant would not have attended his work atleast for a period of 3 months. Therefore, the compensation awarded by the Tribunal towards loss of income is modified to Rs.21,000/- (Rs.7,000/- X 3 months). The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

14.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants..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.	Loss of future earning capacity	6,91,200/-	8,06,400/-	Enhanced
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Loss of amenities	20,000/-	20,000/-	Confirmed
4.	Loss of income	18,000/-	21,000/-	Enhanced
5.	Transportation	12,000/-	12,000/-	Confirmed
6.	Attendant charges	10,000/-	10,000/-	Confirmed
7.	Medical expenses	1,08,684/-	1,08,684/-	Confirmed
	Total	Rs.8,79,884/- 30% of the award amount comes to Rs.2,63,965/-	Rs.9,98,084/- rounded off to Rs.9,98,100/-	Enhanced by Rs.7,34,135/- (Rs.9,98,100/- - Rs.2,63,965/-)

15.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,63,965/- is hereby enhanced to Rs.9,98,100/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The 2nd respondent 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.25 of 2012 on the file of



the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi. 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. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation now determined by this Court. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk
To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Vaniyambadi.

Copy to

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

+1cc to M/s.S.Arunkumar, Advocate Sr.10099
+1cc to M/s.C.Munusamy, Advocate Sr.9845

C.M.A.No.1677 of 2016

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srg 01/09/2021