

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2888 of 2013

P.Murugan

.. Appellant

Vs.

1.S.Thennappan

2.M/s. The Oriental Insurance Company Limited,
D.O.2 Uil Building, 4th Floor,
No.8, Esplanade, Chennai - 600 108.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.04.2013 made in M.C.O.P.No.36 of 2010 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran
For R2 : Mr.J.Chandran
R1 Exparte

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 22.04.2013 made in M.C.O.P.No.36 of 2010 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.36 of 2010 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.12.2009.

4.According to the appellant, on 06.12.2009 at about 22.30 hours while he was walking on the GST road towards Chrompet near Bhatt Hotel, Tambaram the driver of the Hyundai Accent car bearing Registration No.TN 07 AH 6000 belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against him and caused the accident. In the accident, the appellant sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum

of Rs.8,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the car respectively.

5.The 1st respondent-owner of the car remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company, being the insurer of the car filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent-Insurance Company, the driver of the 1st respondent's car drove the same cautiously by observing the traffic rules. However, the appellant who was walking in the GST road, suddenly crossed the road without seeing the oncoming vehicle. On seeing the same, the driver of the 1st respondent's car applied brake and averted the major accident. But, the appellant could not control himself and dashed against the car, fell down and sustained injuries. Therefore, only the appellant was responsible for the accident and not the driver of the 1st respondent's car. The appellant has to prove his age, avocation, income, nature of injuries and disability suffered by him by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the appellant examined himself as P.W.1, Dr.N.Saichandran was examined as P.W.2, Dr.T.S.Kalkura was examined as P.W.3 and one Ramesh was examined as P.W.4 and 11 documents were marked as Exs.P1 to P11. The 2nd respondent-Insurance Company did not let in any oral evidence but marked A.R copy as Ex.R1.

8.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 car belonging to the 1st respondent as well as the negligent act of the appellant and fixed 10% negligence on the part of the appellant on the ground that the appellant was under the influence of alcohol at the time of accident and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.1,91,800/- towards 90% of the award amount as compensation to the appellant.

9.Challenging the portion of the award fixing 10% contributory negligence on the part of the appellant and for enhancement of compensation, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent. The Tribunal having held that accident has occurred

due to rash and negligence on the part of the driver of the 1st respondent's car, erred in fixing 10% contributory negligence on the part of the appellant holding that he was under the influence of alcohol. The 2nd respondent did not examine the driver of the car or any other eye-witness to prove that appellant contributed negligence to the accident. The disability certificate issued by P.W.2/Ortho Doctor, P.W.3/Dental Surgeon for multiple fractures are reasonable. The Tribunal erroneously reduced the percentage of disability to 55%. The appellant was working as an Assistant to Mason and he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation. The Tribunal failed to see the medical receipts produced by the appellant. The Tribunal ought to have granted a sum of Rs.82,727/- towards medical expenses. The Tribunal also erred in rejecting Ex.P4/Medical Bill produced by the appellant and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the appellant and for enhancement of compensation.

11. Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company contended that at the time of accident the appellant was under the influence of alcohol and he was responsible for the accident. The Tribunal considering the same, fixed 10% contributory negligence on the part of the appellant and there is no reason to interfere with the award of the Tribunal for fixing 10% contributory negligence on the part of the appellant. He further contended that the appellant failed to prove that he suffered functional disability and lost his earning capacity. The appellant also has not filed any document to prove his avocation and income. Hence, he is not entitled to compensation by adopting multiplier method. The total compensation awarded by the Tribunal is not meagre and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

12. 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.

13. From the materials available on record, it is seen that it is the contention of the appellant that he sustained injuries in the accident due to the negligence on the part of the driver of the car belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company. The appellant examined himself as P.W.1 and deposed to that effect and marked F.I.R., which was registered against the driver of the 1st respondent's car. The 2nd respondent-Insurance Company has not examined the driver of the 1st respondent's car or any other eye-witness to fix the negligence on the part of the appellant. The Tribunal

considering the evidence of the appellant as P.W.1 and contents of F.I.R. has held that accident has occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent. Having held so, the Tribunal considering Ex.R1/Accident Register copy, held that appellant was under the influence of alcohol and fixed 10% contributory negligence on the part of the appellant. The Tribunal failed to see that respondents did not let in any evidence to show that appellant was intoxicated and contributed to the accident. In the absence of any evidence, 10% contributory negligence fixed on the part of the appellant is erroneous and the same is liable to be set aside and it is hereby set aside. The appellant is entitled to entire compensation awarded by the Tribunal.

14.As far as quantum of compensation is concerned, the appellant has contended that he suffered injuries and fracture and examined P.W.2/Ortho Doctor and P.W.3/Dental Surgeon. P.W.2/Ortho Doctor certified that appellant suffered 40% disability and P.W.3/Dental Surgeon certified that appellant suffered 25% disability. Both P.W.2 and P.W.3 Doctors have not treated the appellant for the injuries suffered by him. They have examined the appellant after three years from the date of accident. Both the Doctors have not filed the X-Ray. The Tribunal considering the above materials, reduced the percentage of disability by 5% and fixed total disability of the appellant as 55%. The appellant has not proved that he suffered functional disability and lost his earning capacity. Hence, the percentage method adopted by the Tribunal is valid and there is no error in the said finding.

15.From the materials on record, it is seen that the appellant has taken treatment in the hospital as in-patient for 5 days i.e. from 07.12.2009 to 11.12.2009. The Tribunal has not awarded any amount towards attendant charges. Hence, a sum of Rs.5,000/- is awarded towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.10,000/- is granted towards loss of amenities. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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.	Disability	1,10,000/-	1,10,000/-	Confirmed
2.	Pain and sufferings	40,000/-	40,000/-	Confirmed

3.	Loss of income	30,000/-	30,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Transportation	20,000/-	20,000/-	Confirmed
6.	Medical expenses	2098.5	2098.5	Confirmed
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Attendant charges	-	5,000/-	Granted
9.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.2,13,098.50 rounded off to Rs.2,13,098/-	Rs.2,28,098.50 rounded off to Rs.2,28,100/-	enhanced by Rs.36,300/-
	90% of the award amount	Rs.1,91,788/- rounded off to Rs.1,91,800/-	Rs.2,28,100/-	

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,91,800/- is hereby enhanced to Rs.2,28,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the necessary Court fee, if any on the enhanced amount of compensation. The 2nd respondent-Insurance Company is directed to deposit the entire enhanced award amount now determined by this Court, (i.e., Rs.2,28,100/-) 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.36 of 2010 on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. 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. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The V Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+lcc to Mr.J.Chandran, Advocate, S.R.No. 33545

C.M.A.No.2888 of 2013

VBA(CO)
GN(06/05/2021)



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