

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.427 of 2020

Ravikumar

.. Appellant/Claimant

Vs.

1.Madhaiyan

2.The Cholamandalam MS General Insurance Co. Ltd.,
No.9, 1st Floor, Rajaji Road, Perumanur,
Maravaneri Post, Salem.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2019 made in M.C.O.P.No.795 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran
For R2 : Ms.R.Sreevidhya

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 25.10.2019 made in M.C.O.P.No.795 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

2.The appellant is claimant in M.C.O.P.No.795 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.01.2018.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver cum owner of the Tata Super Ace (LMV) vehicle belonging to the 1st respondent. As the appellant was not possessing valid driving license at the time of accident, the Tribunal fixed 20% contributory negligence on the part of the appellant, awarded a sum of Rs.2,61,455/- as compensation and directed the 2nd respondent/Insurance Company to pay Rs.2,09,164/- being 80% of Rs.2,61,455/- as compensation to the appellant.

4.Challenging portion of the award fixing 20% contributory negligence and seeking enhancement of compensation, the appellant has come out with the present appeal

5.The learned counsel appearing for the appellant/claimant contended that the Tribunal having held that the accident has occurred due to rash and negligent driving by the 1st respondent, erred in fixing 20% contributory negligence on the part of the appellant for not possessing driving license. At the time of accident, the appellant was running a own power loom unit and was earning a sum of Rs.22,000/- per month. Due to the accident, the appellant suffered grievous injuries and multiple injuries all over the body. He could not continue his work as he was doing earlier. The appellant was referred to Medical Board to assess disability. The Medical Board assessed the disability of the appellant as 15%. The compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside 20% contributory negligence fixed 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 without any valid driving license. The appellant admitted the same in the cross examination that he was not possessing driving license at the time of accident. The Tribunal considering the evidence of the appellant as PW1, rightly fixed 20% contributory negligence on the part of the appellant. The appellant has not proved his avocation and income by producing documentary evidence. He has also not proved that after the accident he could not continue his work as he was doing earlier. The Tribunal considering the same rightly applied percentage method for awarding compensation towards disability. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

8.It is the contention of the appellant, on 28.01.2018, while he was riding his motorcycle bearing registration No. TN NEW 1877 towards Kalipatty to Vaikundham Main Road and at about 08.00 p.m. a Tata Super Act (LMV vehicle) bearing Registration No. TN 52 E 0769, belonging to the 1st respondent drove in a rash and negligent manner, dashed on the motorcycle driven by the appellant and caused the accident. As a result of which, the appellant sustained injuries and disability. To prove the same the appellant examined himself as PW1 and marked Ex.P1/FIR which

was registered against the 1st respondent. The 2nd respondent/Insurance Company contended that the accident did not occur due to rash and negligent driving by the driver of the 1st respondent but it has occurred only due to the negligence on the part of the appellant. To prove the said contention, the 2nd respondent did not examine the 1st respondent or any independent eyewitness. The Tribunal considering the evidence of PW1 and FIR held that the accident has occurred only due to rash and negligent driving by the 1st respondent. The appellant did not possess valid driving license at the time of accident. The appellant, in violation of statutory provision, drove the motorcycle and contributed negligence to the accident. For such statutory violation, contributory negligence has to be fixed on the appellant. Considering the facts of the present case, wherein the accident has occurred only due to rash and negligent driving by the 1st respondent, 20% contributory negligence fixed by the Tribunal on the part of the appellant is reduced to 10%.

9.As far as quantum of compensation is concerned, the appellant sustained multiple injuries all over the body. The appellant was referred to Medical Board. The Medical Board assessed the disability of the appellant as 15%. The disability certificate issued by the Medical Board was marked as Ex.C1. The Tribunal accepting the disability certificate issued by the Medical Board, awarded a sum of Rs.45,000/- (Rs.3,000/- x 15%) towards disability at the rate of Rs.3,000/- per percentage of disability. The accident is of the year 2018 and the amount awarded by the Tribunal towards disability is not proper. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2018. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Therefore, the appellant is entitled to compensation for 15% towards disability at the rate of Rs.5,000/- per percentage. Thus, a sum of Rs.75,000/- (15% x Rs.5,000/-) is awarded towards disability.

10.According to the appellant, he was aged 49 years, at the time of the accident and was earning a sum of Rs.22,000/- per month by running his own power looms. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.7,500/- as monthly income of the appellant. The accident is of the year 2018 and the monthly income fixed by the Tribunal is meagre. Hence a sum of Rs.13,000/- is fixed as monthly income of the appellant.

Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a periof of six months. Therefore, a sum of Rs.78,000/- (Rs.13,000/- x 6) is awarded towards loss of income for six months. The appellant has taken treatment as inpatient from 29.01.2018 to 05.02.2018 for eight days in Ganga Medical Centre, Coimbatore. During the treatment he underwent surgery, plate and screws were fixed. The amounts awarded by the Tribunal towards attendant charges and damages to clothes are meagre. Considering the period of treatment and nature of injuries sustained by the appellant, a sum of Rs.10,000/- and Rs.3,000/- are awarded towards attendant charges and damages to clothes respectively. 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 or reduced
1.	Disability	45,000	75,000	Enhanced
2.	Pain and suffering	15,000	15,000	Confirmed
3.	Loss of amenities	15,000	15,000	Confirmed
4.	Medical expenses	1,15,455	1,15,455	Confirmed
5.	Loss of income	45,000	78,000	Enhanced
6.	Transportation charges	10,000	10,000	Confirmed
7.	Extra nourishment	10,000	10,000	Confirmed
8.	Attendant charges	5,000	10,000	Enhanced
9.	Damages to clothes	1,000	3,000	Enhanced

Total	Rs.2,61,455/-	Rs.3,31,455/-	Enhanced by Rs.89,146/-
80% of the award amount	Rs.2,09,164/-	-	
90% of the award amount	-	Rs.2,98,310/-	

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,61,455/- is hereby enhanced to Rs.3,31,455/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is entitled to 90% of the award amount i.e. Rs.2,98,310/-. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 90% of the enhanced award amount now determined by this Court i.e., Rs.2,98,310/- 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 if any, already withdrawn. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1. The Special Subordinate Judge No.II,
The Motor Accident Claims Tribunal
Salem.

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

+2 Ccs to Mr.C. Paraneedharan, Advocate sr 10941.
+1 CC to M/s.R.Sree Vidya, Advocate sr 11301.

C.M.A.No.427 of 2020

MR (CO)
SP (29/10/2020)