

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.820 of 2017

S.Murugan

.. Appellant/Claimant

Vs.

1. G.Harikrishnan
(R1 remained exparte before the Tribunal
and hence, notice to R1 is dispensed with)
2. The Oriental Insurance Company Ltd.
Jawaharlal Nehru salai
Thiruvallur. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2013 made in M.C.O.P.No.237 of 2010 on the file of Motor Accident Claims Tribunal, II Additional District Court, Thiruvallur.

For Appellant : Ms.S.Ramya
for Mr.J.Mahalingam

For R2 : Mr.N.Sampath

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 30% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 31.10.2013 made in M.C.O.P.No.237 of 2010 on the file of Motor Accident Claims Tribunal, II Additional District Court, Thiruvallur.

2.The appellant is claimant in M.C.O.P.No.237 of 2010 on the file of Motor Accident Claims Tribunal, II Additional District Court, Thiruvallur. 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 07.04.2005.

3. According to the appellant, on the date of accident, i.e., on 07.04.2005 at about 22.15 hours, while the appellant was riding in his motorcycle along with a pillion rider from East to West direction at Tharamani salai, a car belonging to the 1st respondent, which came from the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation.

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

5. The 2nd respondent/Insurance company filed counter statement denying the averments made by the appellant and contended that the accident has occurred only due to rash and negligent riding by the appellant. The person who lodged the complaint was not an eye-witness to the accident. The appellant did not possess valid driving license and both the appellant & the pillion rider of the motorcycle were under the influence of alcohol at the time of accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6. Before the Tribunal, the pillion rider of the motorcycle was examined as P.W.1, the appellant examined himself as P.W.2 and Dr. Subramaniam was examined as P.W.3 in M.C.O.P.No.236 of 2010 & P.W.4 in M.C.O.P.No.237 of 2010 and marked seventeen documents as Exs.P1 to P17. No oral evidence was let in on the side of the respondents. A copy of Accident Register of the appellant and pillion rider was marked as Ex.R1 through P.W.1 during his cross-examination.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the appellant, rider of the motorcycle and driver of the car belonging to the 1st respondent, fixed 30 : 70 contributory negligence on the part of the appellant and the 1st respondent respectively, arrived a sum of Rs.1,94,584/- payable as compensation and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs.1,36,209/- i.e. 70% of the award amount as compensation to the appellant.

8.The appellant has come out with the present appeal challenging the portion of the award fixing 30% contributory negligence on the part of the appellant as well as for enhancement of compensation.

9.The learned counsel appearing for the appellant contended that while the appellant was riding in his motorcycle on the left hand side of the road, the driver of the car belonging to the 1st respondent, which came in the opposite direction, drove the same in a rash and negligent manner and while he was overtaking the tempo van came into extreme right side, dashed against the motorcycle driven by the appellant. Though it is stated that the appellant had consumed alcohol at the time of accident, there was no report of imbalanced ride by the appellant. The appellant rode his motorcycle on the left side of the road within midway thereof. The respondents have not let in any contra evidence to disprove the contention of the appellant. The accident has occurred only due to rash and negligent driving by the driver of the car belonging to the 1st respondent. The Tribunal erred in fixing 30% contributory negligence on the part of the appellant on the ground that the accident was head on collision. The Tribunal considering the nature of injuries, ought to have awarded compensation by adopting multiplier method for loss of earning capacity. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 30% contributory negligence on the part of the appellant and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant had consumed alcohol and was in inebriated condition at the time of accident. The Accident Register was altered to show that the appellant was conscious and well oriented. The appellant is responsible for the accident and the Tribunal ought to have fixed entire negligence on the part of the appellant. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The amounts awarded by the Tribunal under different heads are excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal. In support of his contention, the learned counsel relied on the following judgment of this Court reported in 2019 (2) TNMAC 676 (K.Shanmugam vs. V.Krishnamurthy and others);

"31. In view of the above and since Section 185 is placed in Chapter 13 of the Motor Vehicles Act, the Central Government is to consider a suitable amendment in this regard by allowing various State Governments / Union Territories to adopt a zero tolerance norm in Section 185 itself. The time has now come for just such a measure. Too many lives have already been lost to this lethal cocktail of internal consumption and internal combustion.

32. Coming back to the case on hand, since this Court, by the above reasonings, has come to the conclusion to adopt stringent views on drunken driving, the findings rendered by the Tribunal, on contributory negligence as well as quantum, have no legs to stand. This Court finds that the claimant himself was the tort-feasor and was responsible for the accident. As such, the question of fastening liability either on the owner or on the Insurance Company does not arise."

11. 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.

12. The first issue to be decided in this appeal is that whether the Tribunal is right in fixing 30% contributory negligence on the part of the appellant.

13. It is the contention of the learned counsel appearing for the appellant that the driver of the car belonging to the 1st respondent, which came from the opposite direction, drove the same in a rash and negligent manner, overtook a tempo van, came to wrong side, dashed against the motorcycle driven by the appellant and caused the accident. Due to the said impact, the appellant sustained multiple injuries. To substantiate this contention, the appellant examined himself as P.W.2 and marked F.I.R., which was registered against the driver of the car, as Ex.P1. The respondents have not let in any contra evidence to disprove this contention. The Tribunal considering Ex.R1/Accident Register copy produced by the 2nd respondent/Insurance Company, wherein it was stated that the appellant and the pillion rider had consumed alcohol, took note of the fact that three lines in the Accident Register copy had been struck off and subsequently, it is stated that the appellant was conscious and well oriented. In view of striking off three lines and alteration in Ex.R1/Accident Register copy,

the Tribunal has held that alteration would have been done at the instance of the appellant in order to fit his case. Considering the materials available on record, the Tribunal held that the accident is head on collision and the appellant has also contributed to the negligence. The said finding is not correct. The contention of the appellant that the driver of the car himself dashed against the motorcycle was not disputed by the respondents by letting in any evidence. In any event, considering the entire materials on record and alteration in the Accident Register copy, 20% contributory negligence is fixed on the part of the appellant, as 30% negligence fixed by the Tribunal on the part of the appellant is excessive. In the present case, no clinical test or any other test was conducted on the appellant to ascertain the percentage of alcohol content in the body of the appellant. In view of the same, the judgment relied on by the learned counsel appearing for the 2nd respondent does not advance the case of the 2nd respondent.

14. As far as quantum of compensation is concerned, it is the contention of the appellant that due to the accident, his left leg was shortened by two inches. P.W.4/Doctor has assessed the disability of the appellant as 65%. The Tribunal reduced the disability of the appellant to 60% as there would be 5% variation of disability and awarded a sum of Rs.1,20,000/- (Rs.60% X Rs.2,000/-) towards disability at the rate of Rs.2,000/- per percentage of disability. The reason assigned by the Tribunal for reducing the percentage of disability is not correct, when there is no contra evidence to the evidence of P.W.4/Doctor and disability and the appellant is entitled to compensation for 65% disability. Thus, a sum of Rs.1,30,000/- (Rs.2,000/- X 65%) is awarded towards disability. The appellant has not proved that he suffered functional disability and loss of earning power. Hence, he is not entitled to compensation by adopting multiplier method. According to the appellant, he has taken treatment as in-patient in Government Royapettah Hospital from 07.04.2005 to 16.04.2005 and has taken further treatment at Puttur bone setters hospital. The Tribunal has not awarded any compensation towards attendant charges and loss of amenities. Considering the nature of injuries sustained and period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. The Tribunal has awarded a sum of Rs.10,000/- for loss of comfort and hence, the appellant is not entitled to any compensation for loss of amenities, as compensation awarded for loss of comfort is only for loss of amenities. A sum of Rs.5,000/- awarded by the Tribunal towards extra nourishment is meagre and hence, the same is hereby enhanced to Rs.10,000/-. The amounts awarded by the Tribunal under all 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	1,20,000	1,30,000	Enhanced
2.	Medical bills	584	584	Confirmed
3.	Loss of income	39,000	39,000	Confirmed
4.	Loss of comfort	10,000	10,000	Confirmed
5.	Pain and suffering	15,000	15,000	Confirmed
6.	Extra nourishment	5,000	10,000	Enhanced
7.	Transportation	5,000	5,000	Confirmed
8.	Attendant charges	-	10,000	Granted
	Total	1,94,584	2,19,584	
	70% of the award amount	1,36,209		
	80% of the award amount		1,75,667	Enhanced by Rs.39,458/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,36,209/- is hereby enhanced to Rs.1,75,667/- 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 necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant shall not be entitled for any interest for the delay period on the amount of Rs.39,458/- enhanced by this Court as per the order of this Court dated 16.02.2017 in M.P.No.1 of 2015 in C.M.A.SR.No.73269 of 2015. The 2nd respondent/Insurance Company is directed to deposit 80% of the enhanced award amount now determined by this Court i.e., Rs.1,75,667/- 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.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kj

To

The II Additional District Judge
The Motor Accident Claims Tribunal
Tiruvallur at Poonamallee.

Copy To

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

+1cc to Mr.N.Sampath, Advocate SR.No.12348

+1cc to Mr.J.Mahalingam, Advocate SR.No.11717

C.M.A.No.820 of 2017

SP(CO)
GMY(19/04/2021)

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