

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.2306 OF 2019 & 3598 OF 2019

AND

C.M.P.NO.20803 OF 2019

C.M.A.No.2306 of 2019

Loganathan

... Appellant/Claimant

Vs.

The Chief Electrical Engineer,
Railway Electrification, Egmore,
Chennai - 600 008.

.. Respondent/Respondent

C.M.A.No.3598 of 2019

The Chief Electrical Engineer,
Railway Electrification, Egmore,
Chennai - 600 008.

.. Appellant/Respondent

Vs.

Loganathan

.... Respondent/Claimant

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.09.2018 made in M.C.O.P.No.2300 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

C.M.A.No.2306 of 2019

For Appellant : Mr.K.Muthuvisakan

For Respondent : Ms.M.Sangeethavalli
for Mr.M.T.Arunan

C.M.A.No.3598 of 2019

For Appellant : Ms.M.Sangeethavalli
for Mr.M.T.Arunan

For Respondent : Mr.K.Muthuvisakan

C O M M O N J U D G M E N T

C.M.A.No.3598 of 2019 is filed by the respondent against the award dated 26.09.2018 made in M.C.O.P.No.2300 of 2012 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai and C.M.A.No.2306 of 2019 is filed by the claimant to set aside 25% of contributory negligence fixed on the part of the claimant and for enhancement of compensation.

2.Both the Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

3.The claimant filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.01.2012.

4.According to the claimant on 13.01.2012 at about 13.45 hours, while he was riding a motorcycle on Loco road, near Loco Works, Perambur, from South to North direction, the lorry belonging to the respondent driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the said impact the claimant sustained grievous and multiple injuries. At the time of accident, the claimant was aged 25 years, working as a Driver and was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by him in the accident, he could not do any work as he was doing earlier. Therefore, the claimant filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation against the respondent, being the owner of the lorry.

5.The respondent filed counter statement denying the averments made by the claimant in the claim petition and contended that the accident occurred not due to rash and negligent driving by the driver of the lorry belong to the respondent. According to the respondent, while the driver of the lorry was turning the lorry to the left hand side to enter the main gate of the Loco Works, Perambur, the claimant who was coming behind the lorry in his motorcycle at the main gate

entrance suddenly tried to overtake the lorry from the left side. In spite of the signal indication of the lorry and the co-driver's hand signal, the claimant dashed against the back wheel of the lorry and invited the accident. Hence, the driver of the lorry was not responsible for the accident and the claimant alone is responsible for the accident. Hence, the respondent is not liable to pay any compensation to the claimant. The claimant has to prove his age, avocation and income by producing valid documents. In any event, the compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, Claimant examined himself as P.W.1, and marked thirteen documents as Exs.P1 to P13. On behalf of the respondent, driver of the lorry viz., R.Thangaraj was examined as R.W.1 and four documents were marked as Exs.R1 to R4. The Disability Certificate issued by the Regional Medical Board was marked as Ex.C1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the lorry belonging to the respondent as well as the claimant are responsible for the accident and fixed negligence in the ratio 75% : 25% on the respondent and claimant respectively and directed the respondent, being the owner of the lorry to pay a sum of Rs.8,80,900/- towards 75% of the award amount as compensation to the claimant.

8. Against the award dated 26.09.2018 made in M.C.O.P.No.2300 of 2012, the respondent has come out with appeal in C.M.A.No.3598 of 2019 challenging the negligence as well as quantum of compensation awarded by the Tribunal. The claimant has come out with appeal in C.M.A.No.2306 of 2019 to set aside the portion of the award fixing 25% contributory negligence on the part of the claimant and for enhancement of compensation.

9. The learned counsel appearing for the claimant submitted that the Tribunal ought to have fixed the entire negligence on the part of the driver of the lorry. FIR was registered only against the driver of the lorry and he has not given any complaint against the claimant and he has also not opposed to the contents of FIR. The Tribunal erred in relying on the evidence of R.W.1 and fixed 25% contributory negligence on the part of the claimant. The Tribunal has rightly rejected the judgment of the Criminal Court for the reason that the prosecution failed to prove the charges against the driver of the lorry. The claimant was working as a driver at the time of

the accident and was earning a sum of Rs.10,000/- per month. To prove the avocation and income, the claimant has produced driving license with badge which was marked as Ex.P8. The Tribunal without considering the same, fixed only a meagre sum of Rs.8,000/- as monthly income. The claimant suffered multiple injuries and due to the injuries, his right leg was shortened by 5cm. The claimant produced Ex.P.7/disability certificate, which shows that the claimant suffered 60% disability. The claimant was referred to the Medical Board and the Medical Board has assessed the disability of the claimant as 50%. The Tribunal has not considered the same and reduced the disability to 40%. The claimant has taken treatment as inpatient in the hospital for 74 days. The Tribunal has not awarded any amount towards permanent disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal filed by the respondent in C.M.A.No.3598 of 2019 and for setting aside 25% contributory negligence fixed and for enhancement of compensation.

10.Per contra, the learned counsel appearing for the respondent contended that the Tribunal erred in directing the respondent to pay compensation to the claimant. The Tribunal failed to consider Ex.R3, the Judgment of the Criminal Court in C.C.No.2454 of 2012 on the file of the VI Metropolitan Magistrate, Allikulam Complex, Chennai, wherein the driver of the lorry was acquitted in Criminal Court. The Tribunal erred in fixing only 25% contributory negligence on the part of the claimant and the Tribunal ought to have fixed 75% of contributory negligence on the part of the claimant. The Tribunal erred in relying on Ex.R1 and Ex.R2 to fix negligence on the part of the driver of the lorry, eventhough the Criminal Court has found no negligence on the part of the driver of the lorry. The claimant failed to prove his avocation and income. In the absence of any materials with regard to avocation and income. The Tribunal erred in fixing a sum of Rs.8000/- as monthly income of the claimant and granting 40% enhancement towards future prospects. The Tribunal erred in applying multiplier '18'. The amounts awarded by the Tribunal towards pain & suffering and extra nourishment are excessive and prayed for setting aside the award of the Tribunal and dismissal of C.M.A.No.2306 of 2019 filed by the claimant.

11.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the respondent and perused all the materials available on record.

12.It is the contention of the claimant that the accident occurred due to rash and negligent driving by the driver of the

lorry. To substantiate the said contention, the claimant examined himself as P.W.1 and marked FIR, which was registered against the driver of the lorry, as Ex.P1. On the other hand, it is the contention of the respondent that the claimant rode his motorcycle in a rash and negligent manner and tried to overtake the lorry and while turning right to enter the main gate of the respondent's office, dashed the right rear wheel of the lorry. The respondent examined driver of the lorry as R.W.1 and marked the documents as Exs.R1 to R4. The driver of the lorry as R.W.1 deposed that the accident occurred only due to rash and negligent riding of the motorcycle by the claimant. The respondent relied on Ex.R3 Judgement, acquittal in criminal case, Ex.R1 & Ex.R2. The Tribunal considering the judgement of criminal Court did not accept the same as prosecution failed to prove the offences against the accused under Section 338 of IPC and Section 184 of M.V. Act, beyond reasonable doubt. Further Tribunal is not bound by the judgement of criminal Court and also contents of FIR. Tribunal has to independently consider the documents. In the present case Tribunal considered Ex.R3 and also Ex.R1. The Tribunal considered Ex.R3 and also Ex.R1-photos & Ex.R2-Rough sketch. From rough sketch, the Tribunal found that the driver of the lorry was turning to left from right side of the road to enter the main gate of the LOCO Works of the respondent's office, which is situated on the left side of the road in a rash manner, hit the motorcycle which was coming left side of the lorry. The Tribunal considering this fact held that the driver of the lorry could have avoided the accident, had he driven the lorry on the left side of the road. At the same time the accident has occurred, when the claimant dashed on the back wheel of the lorry and in view of the same, the Tribunal fixed 25% contributory negligence on the part of the claimant and 75% contributory negligence on the part of the driver of the lorry. The Tribunal having held that the accident occurred due to rash and negligent driving by the driver of the lorry, fixing 25% contributory negligence on the part of the claimant is excessive and therefore, the negligence fixed on the part of the claimant is reduced to 10% and 90% negligence is fixed on the part of the driver of the lorry. The respondent is directed to pay 90% of the award amount to the claimant.

13.As far as the quantum of compensation is concerned, the claimant contended that at the time of accident, he was working as a driver and was earning a sum of Rs.10,000/- per month and produced driving license with badge to prove the same. The claimant has not produced any material to prove that he was working as a driver. The Tribunal considering the statement given by the claimant under Section 161 Cr.P.C that he is working as a helper in Doss Audios, fixed a sum of Rs.8,000/- as monthly income of the claimant and granted 40% enhancement towards future prospects. The accident is of the year 2012 and

the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- per month is fixed as notional income of the claimant. At the time of accident, the claimant was aged about 24 years and the enhancement granted by the Tribunal at 40% is confirmed. The claimant produced Ex.P7/disability certificate, which shows that the claimant suffered 60% disability. The Tribunal referred the claimant to the Medical Board and the team of the Doctors who examined the claimant certified that the claimant suffered 50% disability. Considering the nature of injuries sustained by the claimant, the Tribunal reduced the disability assessed by the Medical Board to 40%, which is not correct. The Tribunal has adopted multiplier method for awarding compensation towards disability, which is in order. A team of the Doctors examined the claimant and stated that the claimant suffered 50% disability and the same will affect the claimant to carryout his work and hence, he is entitled to compensation for 50% disability. Thus, the amount awarded by the Tribunal towards disability is modified to Rs.15,12,000/- [Rs.10,000/- + Rs.4000/- (Rs.10,000 x 40%) 12 x 18 x 50%].

14.From the award passed by the Tribunal, it is seen that immediately after the accident, the claimant was taken to Kilpauk Medical College Hospital and thereafter he has treated as in-patient in the Rajiv Gandhi Government General Hospital from 13.01.2012 to 13.03.2012 and thereafter he has taken treatment in the Parvathy Hospital as in-patient from 15.09.2012 to 17.09.2012 and from 16.10.2012 to 26.10.2012 in two different spells, totalling to 74 days. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards attendant charges, damages to clothes and extra nourishment are meagre and the same are enhanced to Rs.50,000/-, Rs.2,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal towards pain and sufferings, transportation, medical expenses, loss of income and loss of amenities 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	9,67,680/-	15,12,000/-	Enhanced
2.	Pain and sufferings	70,000/-	70,000/-	confirmed

3.	Extra Nourishment	25,000/-	50,000/-	Enhanced
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Damages to cloths	1,000/-	2,000/-	Enhanced
6.	Medical Expenses	33,832/-	33,832/-	confirmed
7.	Attendant charges	22,200/-	50,000/-	Enhanced
8.	Loss of income	19,733/-	Rs.19,733/-	confirmed
9.	Loss of amenities	25,000/-	25,000/-	confirmed
	Total	Rs.11,74,445/-	Rs.17,72,565/-	Enhanced by Rs.7,14,450/- (Rs.15,95,350/- - Rs.8,80,900/-)
	75% of the award amount	Rs.8,80,833.75 rounded off to Rs.8,80,900/-	-	
	90% of the award amount	-	Rs.15,95,308.50 Rounded off to Rs.15,95,350/-	

15. In view of the above, the compensation awarded by the Tribunal at Rs.8,80,900/- is hereby enhanced to Rs.15,95,350/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 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 eight weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.2300 of 2012 on the file of the Motor Accident Claims Tribunal, VI 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. The appellant is directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court.

16.In the result, C.M.A.No.2306 of 2019 filed by the claimant is allowed and C.M.A.No.3598 of 2019 filed by the respondent is dismissed. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsn

To

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

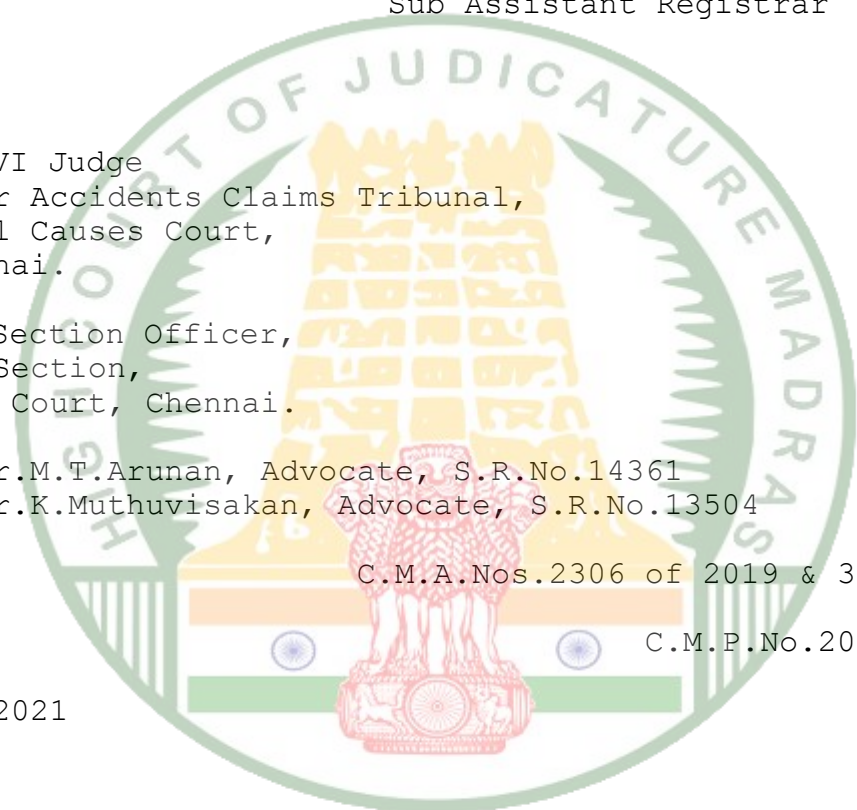
2. The Section Officer,
V.R.Section,
High Court, Chennai.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.14361

+1cc to Mr.K.Muthuvisakan, Advocate, S.R.No.13504

C.M.A.Nos.2306 of 2019 & 3598 of 2019
and
C.M.P.No.20803 of 2019

VBA (CO)
CS/11/02/2021



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