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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2207 of 2014

Suresh @ Sureshkumar

.. Appellant

Vs.

1. Gulab John

2. The New India Assurance Company Limited,
Branch Office No.39-C, Nethaji Bye-Pass Road,
Dharmapuri.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.08.2013 made in M.C.O.P.No.382 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For R2 : Mr.J.Chandran

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 29.08.2013 made in M.C.O.P.No.382 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

3.The appellant is the claimant in M.C.O.P.No.382 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. He filed the above 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 31.01.2010.

4.According to the appellant, on 31.01.2010 at about 11.00 P.M., while he was proceeding in his Yamaha motorcycle bearing Registration No.TN 05 A 4494 on Dharmapuri - Maniyakarankottai



road near the Sogathur lake bank, the driver of the lorry bearing Registration No.TN 29 A 5227 drove the lorry from the opposite direction in a rash and negligent manner and dashed against the appellant and caused the accident. In the accident, the appellant sustained injury on his parietal region and also fracture on left leg. Immediately after the accident, he was admitted in Dharmapuri Government Medical College Hospital, Dharmapuri and thereafter he was referred to OmSakthi Hospital, Dharmapuri, where he took treatment as in-patient from 01.02.2010 to 05.02.2010. Therefore, the appellant filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation against the respondents, being the owner and insurer of the lorry respectively.

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

6.The 2nd respondent-Insurance Company, being the insurer of the lorry belonging to 1st respondent filed counter statement and denied all the averments made by the appellant. According to 2nd respondent, the accident has not occurred as alleged by the appellant. The driver of the lorry drove the same slowly and carefully. The appellant only rode his motorcycle under the influence of alcohol from the opposite direction in a rash and negligent manner in the tank bund road in a curve without reducing his speed. Due to the same, the appellant lost his control and his vehicle skid off the road, fell down and sustained injuries. The driver of the lorry belonging to 1st respondent did not hit either against the appellant or his motorcycle. Therefore, the lorry belonging to 1st respondent was not at all involved in the accident and hence, the 2nd respondent is not liable to pay any compensation to the appellant. Further, the driver of the lorry belonging to 1st respondent as well as the appellant were not possessing valid driving license at the time of accident. The appellant has to prove that the lorry belonging to 1st respondent was having valid documents to ply on the road. The appellant has to prove that the lorry belonging to 1st respondent was insured with the 2nd respondent-Insurance Company at the time of accident. The owner and insurer of the motorcycle rode by the appellant at the time of accident has to be impleaded as necessary parties in the claim petition. Therefore, the 2nd respondent is not liable to pay any compensation. The injuries sustained by the appellant are only simple in nature. The appellant has to prove his age, avocation, income, nature of injuries, disability suffered, medical expenses incurred and period of treatment taken 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.



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7. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.S.Krishnakumar was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held both the appellant as well as the driver of the lorry belonging to 1st respondent are responsible for the accident, fixed negligence in the ratio 50% : 50%, awarded a sum of Rs.2,72,720/- as compensation to the appellant and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,36,360/- being 50% of the award amount as compensation to the appellant.

9. Questioning the portion of the award fixing 50% contributory negligence as well for enhancement of compensation in the award dated 29.08.2013 made in M.C.O.P.No.382 of 2011, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal erred in relying on the endorsement made in Ex.P2/AR copy and concluded that appellant was under the influence of alcohol at the time of accident. The Tribunal failed to see that no test was conducted to find out whether the contents of alcohol level in the blood of the appellant is within permissible limit or above permissible limit. Without any chemical or laboratory test, the Tribunal erroneously held that appellant was under the influence of alcohol at the time of accident and contributed negligence to the accident. The respondents have not let in any evidence to prove that appellant was under the influence of alcohol at the time of accident. He further contended that appellant suffered 40% disability and proved the same by examining P.W.2/Doctor. The Tribunal erroneously reduced the percentage of disability certified by P.W.2/Doctor and granted only meagre amount as compensation. The appellant was working as Spenner in Aluminium Factory, Indur and was earning a sum of Rs.12,000/- per month. The Tribunal erroneously fixed meagre amount of Rs.3,000/- per month as notional income of the appellant. The amounts awarded by the Tribunal under other heads are meagre and prayed for setting aside the portion of the award fixing 50% contributory negligence fixed on the part of the appellant and for enhancement of compensation.

11. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred only due to negligent act of the appellant as he was under the influence of alcohol at the time of accident. The Tribunal considering the same, rightly fixed 50% contributory



negligence on the part of the appellant. The injuries sustained by the appellant are only simple injuries. The appellant has not proved that he suffered functional disability and lost his earning capacity. In the absence of any material with regard to functional disability, the Tribunal wrongly adopted multiplier method and granted compensation towards future loss of income. The amounts awarded by the Tribunal under different heads are not meagre 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 available on record.

13. From the materials available on record, it is seen that it is the contention of the appellant that while he was riding his motorcycle, the driver of the lorry belonging to 1st respondent drove the same in a rash and negligent manner and dashed against the motorcycle in which the appellant was riding and caused the accident. In the accident, the appellant sustained injuries. To substantiate the said contention, the appellant examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the lorry belonging to 1st respondent. On the other hand, it is the contention of the 2nd respondent that at the time of accident, the appellant was riding the motorcycle under the influence of alcohol and the motorcycle skid off and due to the same, the appellant fell down and sustained injuries. Therefore, the driver of the lorry was not responsible for the accident. The 2nd respondent has not examined the driver of the lorry or any eyewitness to prove the said contention. The 1st respondent or the driver of the lorry did not lodge any complaint against the appellant or filed objection to the F.I.R. regarding F.I.R. registered against the driver of the lorry. The Tribunal considering the evidence of appellant as P.W.1, F.I.R. and A.R. copy held that appellant was riding the motorcycle under the influence of alcohol and it is the duty of the driver of the lorry to take proper care of caution to avoid the accident and held that accident has occurred due to rash and negligent driving by the driver of the lorry and appellant also contributed negligence to the accident. From the award of the Tribunal, it is seen that the Tribunal relying on Ex.P2/A.R. copy, fixed contributory negligence on the part of the appellant, wherein it has been mentioned that appellant was smelling alcohol. The Tribunal failed to see that no test was conducted to ascertain the contents of alcohol in the blood of the appellant. Unless test is conducted and it is proved that alcohol contents in the blood is more than permissible limit, it cannot be concluded that appellant was under the influence of alcohol at the time of accident. In the absence of any such test, the Tribunal erroneously held that



appellant was under the influence of alcohol at the time of accident and fixed contributory negligence on the part of the appellant. The said erroneous finding is liable to be set aside and it is hereby set aside.

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14. As far as quantum of compensation is concerned, the appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. P.W.2/Doctor after examining the appellant, certified that appellant suffered 40% disability. P.W.2/Doctor has not deposed that appellant suffered functional disability or lost his earning capacity. In the absence of any evidence, the compensation awarded by the Tribunal by adopting multiplier method is not correct. The accident occurred in the year 2010. For 40% disability, the appellant is entitled to a sum of Rs.1,20,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. In view of the excess amount of Rs.2,52,720/- awarded by the Tribunal towards disability, the appellant is not entitled to any enhancement. The compensation awarded by the Tribunal is hereby confirmed. The appellant is entitled to entire amount awarded by the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,72,720/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the entire award amount i.e., Rs.2,72,720/- 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.382 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri. On such deposit, the appellant is permitted to withdraw the 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 IV)

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Sub Assistant Registrar

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To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.



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

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+1cc to Mr.J.Chandran, Advocate, S.R.No.39161

C.M.A.No.2207 of 2014

SSV (CO)
GMY (26/08/2021)