

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3953 of 2019

S.Santhakumar

.. Appellant/Claimant

Vs.

1.B.Sundarrajan

2.Reliance General Insurance Company Limited,
Rai's Tower, 2nd Floor,
Plot No.2054, 2nd Avenue Road,
Annanagar, Chennai - 600 040.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.01.2018 made in M.C.O.P.No.2427 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan
For R2 : Mr.S.Arun Kumar
R1 : Not Ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging 10% of contributory negligence fixed on the part of the appellant as well as for enhancement of compensation granted by the award dated 17.01.2018 made in M.C.O.P.No.2427 of 2011 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.According to the appellant, on 17.05.2011 at about 11.30 hours, while he was riding his motorcycle at Periyar Pathai, Near Aries Mahal, Choolaimedu, Chennai, the driver of the Tata Ace, belonging to the 1st respondent, who was driving the Tata Ace behind the appellant, came in a rash and negligent manner at a great speed and dashed on the backside of the appellant's motorcycle and caused the accident. In the accident, the appellant sustained grievous injuries and was admitted in the Hospital. At the time of accident, the appellant was working as

AC Mechanic Helper and was earning a sum of Rs.200/- per day. Due to the injuries sustained by him in the accident, he could not able to continue his work. Therefore, he filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation against the respondents 1 and 2, being the owner and insurer of the Tata Ace for the injuries sustained by him in the accident.

3.The 1st respondent, owner of the Tata Ace filed counter statement and denied all the averments made by the appellant. According to the 1st respondent, the accident has occurred only due to rash and negligent riding by the appellant. The driver of the Tata Ace drove the same with due care and attention. The accident has not occurred as alleged by the appellant. The appellant has to prove the age, avocation, nature of injuries, place and date of accident by producing valid documents. The driver of the Tata Ace belonging to the 1st respondent was possessing valid driving license and the Tata Ace was insured with the 2nd respondent-Insurance Company at the time of accident. Therefore, the 2nd respondent-Insurance Company is only liable to pay compensation to the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

4.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to 2nd respondent-Insurance Company, the Tata Ace belonging to the 1st respondent was not insured with the 2nd respondent - Insurance Company. The driver of the Tata Ace belonging to the 1st respondent was not possessing valid driving license at the time of accident. Therefore, the 1st respondent violated the terms and conditions of the policy and hence, the 2nd respondent is not liable to pay any compensation to the appellant. The appellant has to prove that the accident has occurred only due to rash and negligent driving by the driver of the Tata Ace belonging to the 1st respondent. The appellant has to prove his age, avocation, income and nature of injuries sustained 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.

5.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.K.J.Mathiazhagan was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. On behalf of the respondents, Mr.S.Balamurugan, Junior Assistant was examined as R.W.1 and Mr.Guruthalingam, Deputy Legal Manager of the 2nd respondent-Insurance Company was examined as R.W.2 and 3 documents were marked as Exs.R1 to R3.

6.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 Tata Ace belonging to the 1st respondent and fixed 10% contributory negligence on the part of the appellant for not possessing valid driving license at the time of accident and directed the 2nd respondent-Insurance Company, being the insurer of the Tata Ace to pay a sum of Rs.1,41,100/- towards 90% of the award amount as compensation to the appellant at the first instance and then recover the same from the 1st respondent/owner of the Tata Ace.

7.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.

8.The learned counsel appearing for the appellant contended that the Tribunal failed to fix entire negligence on the part of the Tata Ace belonging to the 1st respondent. The Tribunal erred in fixing 10% contributory negligence on the part of the appellant. P.W.2/Doctor assessed that the appellant suffered 50% disability and the Tribunal without giving valid reason reduced the same to 30%. The notional income fixed by the Tribunal at Rs.6,000/- per month is meagre. The Tribunal has not awarded any amount towards loss of earning power, medical bills and damage to clothes. The amounts awarded by the Tribunal towards loss of income, transportation and extra nourishment, pain and sufferings, disability and attendant charges are meagre and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the appellant as well as for enhancement of compensation.

9.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal rightly fixed 10% contributory negligence on the part of the appellant on the ground that the appellant was not possessing valid driving license at the time of accident. The Tribunal rightly reduced the percentage of disability from 50% to 30% and awarded compensation. In the absence of any material evidence to prove the avocation and income of the appellant, a sum of Rs.6,000/- per month fixed by the Tribunal as notional income of the appellant is excessive. Therefore, the appellant is not entitled to any amount towards loss of earning power, medical bills and damage to clothes. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

10. 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.

11.The learned counsel appearing for the appellant produced a copy of the driving license of the appellant dated 28.01.2010 and submitted that on the date of accident, i.e., on 17.05.2011, the appellant was possessing valid driving license. The Tribunal having held that the accident has occurred due to negligence on the part of the driver of the Tata Ace belonging to the 1st respondent, erroneously fixed 10% negligence on the part of the appellant on the ground that appellant has not produced the driving license. Considering the same, 10% contributory negligence fixed on the part of the appellant is liable to be set aside and hence, it is hereby set aside.

12.As far as quantum of compensation is concerned, the appellant contended that he was working as AC Mechanic Helper and was earning a sum of Rs.200/- per day. He has not filed any document to prove the same. The Tribunal considering the date of accident, fixed a sum of Rs.6,000/- per month as notional income as claimed by the appellant. Due to the injuries sustained by him in the accident, the appellant would not have attended his work atleast for a period of six months. In view of the same, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.36,000/- [Rs.6,000/- X 6 months]. P.W.2/Doctor assessed that the appellant suffered 50% disability and the Tribunal reduced the same to 30% and awarded compensation only for 30% of disability by fixing a sum of Rs.3,000/- per percentage of disability. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P5/disability certificate. Therefore, the appellant is entitled to compensation for 50% disability. A sum of Rs.3,000/- per percentage of disability fixed by the Tribunal is proper. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,50,000/- (Rs.3,000/- X 50% of disability).

13.From the award passed by the Tribunal, it is seen that the appellant has taken treatment as in-patient for 29 days in two different spells at Government Kilpauk Medical College and Hospital from 17.05.2011 to 03.06.2011 and from 26.11.2011 to 06.12.2011 and underwent surgeries on 23.05.2011 and 30.11.2011. Considering the nature of injuries and period of treatment taken by the appellant, the compensation awarded by the Tribunal towards attendant charges, loss of amenities and pain and sufferings are enhanced to Rs.30,000/-, Rs.20,000/- and Rs.30,000/- respectively. The Tribunal has awarded a meagre sum of Rs.10,000/- towards transportation and extra nourishment and the same is modified as the appellant is entitled to a sum of Rs.10,000/- towards transportation and a sum of Rs.20,000/- towards extra nourishment. The Tribunal has not awarded any amount towards damages to clothes. Therefore, a sum of Rs.2,000/- is awarded towards damages to clothes.

14.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimant. 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	90,000/-	1,50,000/-	Enhanced
2.	Loss of income	18,000/-	36,000/-	Confirmed
3.	Pain and sufferings	20,000/-	30,000/-	Enhanced
4.	Transportation and Extra nourishment	10,000/-	10,000/- 20,000/-	Confirmed Granted
5.	Attendant charges	8,700/-	30,000/-	Enhanced
6.	Loss of amenities	10,000/-	20,000/-	Enhanced
7.	Damage to clothes	-	2,000/-	Granted
	Total	Rs.1,56,700/-	Rs.2,98,000/-	enhanced by
	90% of compensation	Rs.1,41,030/- rounded off to Rs.1,41,100/-		Rs.1,56,900/- - (Rs.2,98,000/- - Rs.1,41,100/-)

15. In the result, this Civil Miscellaneous Appeal is allowed and the 90% compensation awarded by the Tribunal at Rs.1,41,100/- is hereby enhanced to Rs.2,98,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent is directed to deposit the entire enhanced award amount now determined by this Court, 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.2427 of 2011 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 for the enhanced award amount now determined by this Court. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 18417

+1cc to Mr.K.V.Muthuvisakan, Advocate, S.R.No. 17684

C.M.A.No.3953 of 2019

SJI (CO)
GN(11/01/2021)

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