

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2607 of 2017

Mani

.. Appellant/Petitioner

Vs.

1.K.Sathiamoorthi

2.HDFC ERGO General Insurance Company Limited,  
6<sup>th</sup> Floor, Leela Business Park,  
Andheri Kuria Road,  
Andheri (East),  
Mumbai - 400 059.

.. Respondents/respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2017 made in M.C.O.P.No.231 of 2014 on the file of the Motor Accident Claims Tribunal, Sub-Court, Vaniyambadi.

For Appellant : Ms.A.Subadra

For M/s.M.Malar

For R2 : Mr.T.K.Prem Kumar

J U D G M E N T

सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 25.01.2017 made in M.C.O.P.No.231 of 2014 on the file of the Motor Accident Claims Tribunal, Sub-Court, Vaniyambadi.

2.The appellant is claimant in M.C.O.P.No.231 of 2014 on the file of the Motor Accident Claims Tribunal, Sub-Court, Vaniyambadi. He filed the above 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 01.10.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by both the appellant as well as the driver of the TATA Indica Car belonging to the 1<sup>st</sup> respondent and awarded a sum of Rs.2,41,019/- as compensation and directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.1,20,510/- being 50% of the award amount as compensation to the appellant.

4. Challenging the portion of the award fixing 50% contributory negligence on the appellant and seeking for enhancement of compensation, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal failed to fix the entire negligence on the part of the driver of the car belonging to 1<sup>st</sup> respondent and erroneously fixed 50% contributory negligence on the part of the appellant in the absence of any evidence let in by the respondents. The accident occurred when the driver of the car coming from behind the motorcycle, dashed against the back side of the motorcycle. The Tribunal failed to consider F.I.R which was registered only against the driver of the car. The appellant sustained injuries and fracture in right leg both bone, left wrist fracture, left foot fracture and injuries all over the body. The Tribunal failed to consider the evidence of P.W.2/Doctor who examined the appellant, and assessed the disability as 53%. The P.W.2/doctor deposed that the appellant is having mal-united fracture of both bone and right leg and he could not work and able to work and the same was not considered by the Tribunal and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the appellant and prayed for enhancement of compensation.

6.Per Contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the accident has occurred only due to rash and negligent driving by the appellant. The appellant overtook the car and suddenly took a turn towards left hand side without showing any sign or signal and dashed against the 1<sup>st</sup> respondent's car, thereby caused the accident. Therefore, the Tribunal has rightly fixed 50% contributory negligence on the appellant and the compensation awarded by the Tribunal is excessive. The compensation awarded by the Tribunal under various heads are not meagre 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 second respondent/Insurance Company and perused the materials available on record.

8. In the claim petition, the appellant has contended that the driver of the car belonging to 1<sup>st</sup> respondent drove the vehicle in a rash and negligent manner and dashed behind the motorcycle and due to the same, the appellant sustained injuries and claimed compensation. 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 car. On the other hand, the 2<sup>nd</sup> respondent in the counter statement, has stated that after the appellant overtook the car belonging to the 1<sup>st</sup> respondent, suddenly turned to left hand side without any signal and caused the accident. The 2<sup>nd</sup> respondent has not examined any witness to substantiate this contention. Further, no objection was filed against the contents of F.I.R wherein it has been stated that the accident occurred due to rash and negligent driving by the driver of the car belonging to 1<sup>st</sup> respondent. The Tribunal without framing any point for consideration to decide the negligence, has framed only point that whether there is contributory negligence. The Tribunal taking note of the fact that the car dashed against the motorcycle from behind and appellant did not possess driving licence, fixed negligence equally on the appellant as well as the driver of the car. The said finding is erroneous. There is no evidence on record let in by the respondents to show that the appellant was also responsible for the accident. Therefore, this Court is of the view that the finding of the Tribunal holding contributory negligence on the part of the appellant at 50% is liable to be set aside. At the same time, some percentage is liable to be deducted, from the compensation payable to the appellant since he drove the vehicle without care and caution. Therefore, it will be fair and reasonable for the above reason to deduct 20% from the compensation payable to the appellant. Accordingly, the appellant is entitled to only 80% of the compensation.

9.As far as quantum of compensation is concerned, the appellant suffered 53% disability as evident from disability certificate marked as Ex.P11 issued by P.W.2/Doctor. The Tribunal accepted the percentage of disability and awarded Rs.1,32,500/- towards loss of future earning at the rate of Rs.2,500/- per percentage of disability. As per Ex.P8/discharge summary of P.E.S Medical College Hospital dated 10.12.2014, the appellant has taken treatment as inpatient in the hospital from 26.11.2014 to 10.12.2014 and he underwent surgery on 28.11.2014. Considering the nature of injuries and period of treatment, the

appellant is entitled for compensation for 53% disability at Rs.3,000/- per each percentage of disability. Accordingly, a sum of Rs.1,59,000/- (Rs.3,000 X 53) is awarded towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant has contended that at the time of accident, he was working as a Security Guard and was earning a sum of Rs.10,000/- per month. The appellant failed to prove the avocation and income. In the absence of any material evidence, the Tribunal fixed a meagre sum of Rs.25,000/- towards partial loss of earning. The accident is of the year 2014. Hence, the monthly income of the appellant is fixed as Rs.8,000/-. Due to the injuries and disability, the appellant would not have attended his work atleast for a period of six months. The Tribunal has awarded a lumpsum of Rs.25,000/- towards partial loss of earning and the same is enhanced to Rs.48,000/- (Rs.8,000/- X 6 months). The amounts awarded by the Tribunal for Transport expenses & Medical expenses at Rs.9,000/- & Rs.54,519/- are just and reasonable and the same are hereby confirmed. The Tribunal has awarded a sum of Rs.10,000/- each towards pain & suffering and loss of amenities respectively, which are meagre. Hence, the same are enhanced to Rs.20,000/- towards pain & suffering and Rs.25,000/- towards loss of amenities. The Tribunal has not awarded any amount towards attendant charges and extra nourishment. Considering the nature of injuries and period of treatment a sum of Rs.50,000/- each towards attendant charges and extra nourishment are awarded by this Court. 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.   | Loss of future earnings | 1,32,500/-                      | 1,59,000/-                        | enhanced                               |
| 2.   | Partial loss of earning | 25,000/-                        | 48,000/-                          | enhanced                               |
| 3.   | Transportation          | 9,000/-                         | 9,000/-                           | confirmed                              |
| 4.   | Pain & suffering        | 10,000/-                        | 20,000/-                          | enhanced                               |
| 5.   | Loss of amenities       | 10,000/-                        | 25,000/-                          | enhanced                               |

|    |                           |               |               |                           |
|----|---------------------------|---------------|---------------|---------------------------|
| 6. | Medical expenses          | 54,519/-      | 54,519/-      | confirmed                 |
| 7. | Attendant charges         | -             | 50,000/-      | granted                   |
| 8. | Extra nourishment         | -             | 50,000/-      | granted                   |
|    | Total                     | Rs.2,41,019/- | Rs.4,15,519/- | enhanced by Rs.2,11,906/- |
|    | (50% of award amount)     | Rs.1,20,510/- |               |                           |
|    | (80% of the award amount) |               | Rs.3,32,416/- |                           |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,20,510/- is hereby enhanced to Rs.3,32,416/-. The appellant is entitled to interest at the rate of 6% per annum for the enhanced award amount now determined by this Court. The second respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, 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

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To

1. The Subordinate Judge,  
The Motor Accident Claims Tribunal,  
Vaniyambadi.

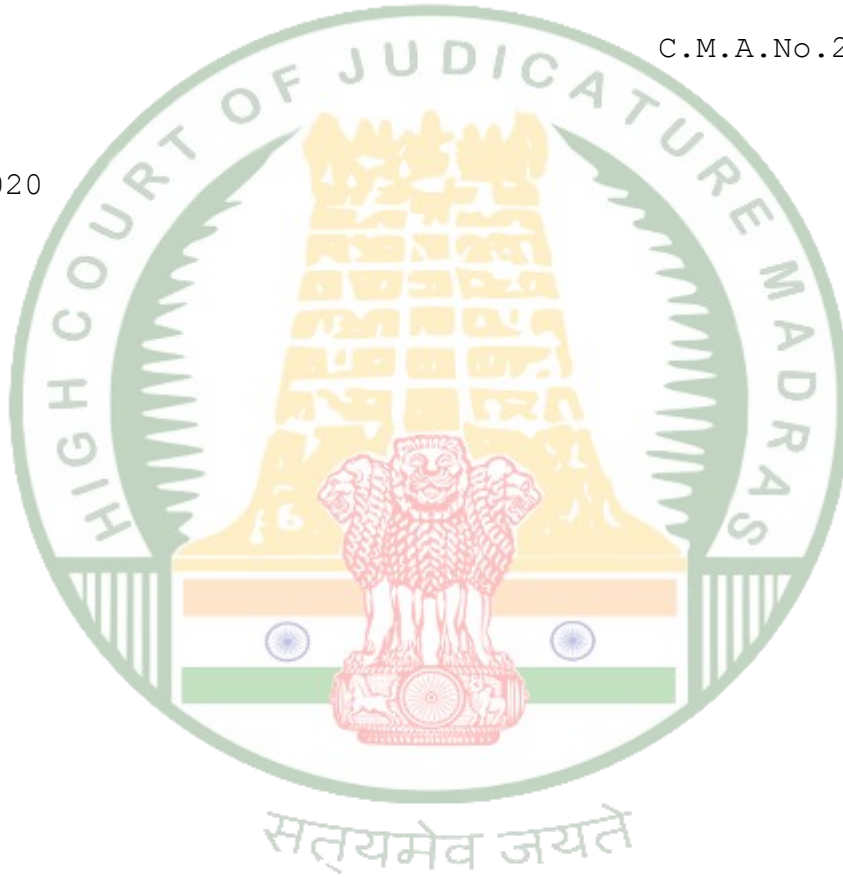
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The Section Officer,  
V.R.Section,  
High Court,  
Madras.

+1 cc to M.Malar Advocate sr12452  
+1 cc to Mr.T.K.Premkumar Advocate sr13417

C.M.A.No.2607 of 2017

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