

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2917 of 2017

Mohammed Rafiq

... Appellant/Claimant

Vs.

1.Sri Shanmugam Bus Service,
No.66, Appavu Nagar,
5th Cross Street,
Dharmapurai-636 701.

2.United India Insurance Co.Ltd.,
R.P.R.Complex, Bye-Pass Road,
Near, Government Hospital
Dharmapuri-636 701.

... Respondents/
Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2016 made in M.C.O.P.No.2776 of 2013 on the file of Motor Vehicles Accident Claims Tribunal cum Special Sub Court, Krishnagiri.

For Appellant : Mr.I.Siddiq
For R2 : M/s.I.Malar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 23.12.2016 and mentioned as 20.12.2016 in decree made in M.C.O.P. No.2776 of 2013 on the file of Motor Vehicles Accident Claims Tribunal cum Special Sub Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.2776 of 2013 on the file of Motor Vehicles Accident Claims Tribunal cum Special Sub Court, Krishnagiri. He has filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.02.2011.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of bus belonging to the 1st respondent and contributory negligence by the appellant and fixed equal negligence on both the driver of the bus as well as the appellant, awarded a sum of Rs.3,13,000/- as compensation and directed the 2nd respondent/Insurance Company to pay 50% of the award amount, i.e, Rs.1,56,500/- as compensation to the appellant.

4. Challenging the portion of the award fixing contributory negligence on the part of the appellant as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the Tribunal erred in holding that appellant also contributed negligence to the accident without there being any evidence. The Tribunal has fixed contributory negligence on the part of the appellant on assumption and presumption. The Tribunal failed to see that respondents have not let in any evidence to disprove the contention of the appellant. The appellant due to the injuries sustained in the accident could not able to move and do his routine work. The Tribunal erred in applying percentage method for awarding compensation instead of applying multiplier method. The total compensation awarded by the Tribunal is meagre and prayed for setting aside 50% contributory negligence fixed on the part of the appellant and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent contended that the accident occurred at the entrance of bus stand. At the time of entering into the bus stand, the buses will be driven slowly. The driver of the bus belonging to the 1st respondent also driven the bus slowly to enter the bus stand. At the time, the appellant rode his motorcycle in a rash and negligent manner and dashed against the bus and invited the accident, even though the driver of the bus tried to stop the bus. The appellant failed to prove that he suffered functional disability and hence he is not entitled to compensation by adopting multiplier method. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as 2nd respondent/Insurance Company and perused all the materials available on record.

8.The 1st respondent/ owner of the vehicle remained exparte before the Tribunal.

9.It is the contention of the appellant that while he was riding his motorcycle slowly and cautiously on the left side of the road at the entrance of new bus stand, the driver of the bus belonging to 1st respondent drove the bus in a rash and negligent manner and dashed against the motorcycle, in which the appellant was riding and caused the accident. To substantiate the said contention, he examined himself as P.W.1 and deposed the manner of the accident, as alleged in the claim petition. On the other hand, it is the contention of the second respondent that appellant has driven the motorcycle in a rash and negligent manner and tried to cross the road, due to which the accident occurred. The 2nd respondent has not let in any evidence to substantiate their contention. It is seen from the cross examination of the appellant by counsel for the second respondent that the accident has occurred in a busy road at the entrance of the bus stand. The appellant in the cross examination admitted that accident has occurred at the entrance of the bus stand and only buses are permitted to enter the bus stand and two wheelers are not permitted to enter the bus stand. The Tribunal considering the pleadings, oral and documentary evidence, especially the admission of the appellant in cross examination, held that the appellant as well as the driver of the said bus, belonging to the first respondent were responsible for the accident. The Tribunal, on such finding, held that the appellant as well as the driver of the bus, are equally responsible for the accident and directed the second respondent to pay 50% of the compensation to the appellant as insurer of the bus. Two vehicles are involved in the accident. The bus belonging to the 1st respondent is heavy vehicle. The appellant ought to have been cautious while riding his motorcycle at the entrance of the bus stand anticipating the buses entering and exiting the bus stand. The 50% contributory negligence fixed on the appellant is excessive. It will be just and reasonable if 25% contributory negligence is fixed on the appellant and second respondent is directed to pay 75% of the compensation.

10. As far as quantum of compensation is concerned, the appellant was referred to Medical Board at Krishnagiri Government Hospital. After examination, the Medical Board assessed the disability of the appellant as 30%. The appellant has not let in any evidence to show that he suffered functional disability and he lost his earning capacity. Hence, the Tribunal rightly applied percentage method to award compensation and the same is in order. The appellant claimed that he was working as Utensils Supplier and was earning a sum of Rs.8000/- per month. The appellant has not let in any documentary evidence to prove his avocation and income. In the absence of any material

evidence, the Tribunal fixed a sum of Rs.6,500/- as monthly income. The accident is of the year 2011. The monthly income fixed is meagre and the same is fixed at Rs.8000/-. Due to the injuries, the appellant would not have worked atleast for six months. The appellant is entitled to a sum of Rs.48,000/- (8000x6) towards loss of income for six months. The amounts granted by the Tribunal for transportation, extra nourishment and attendant charges are meagre and the same are enhanced to Rs.10,000/- each respectively. The amounts awarded by the Tribunal under all the 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
1.	Permanent disability	90,000	90,000	Confirmed
2.	Medical Expenses	74,000	74,000	Confirmed
3.	Transportation	5000	10,000	Enhanced
4.	Extra nourishment	3000	10,000	Enhanced
5.	Attendant Charges	1,000	10,000	Enhanced
6.	Pain and suffering	50,000	50,000	Confirmed
7.	Loss of amenities and enjoyment of life	50,000	50,000	Confirmed
8.	Damage to clothing and articles	1,000	1,000	Confirmed
9.	Partial loss of income	39,000	48,000	Enhanced
	Total	Rs.3,13,000/-	Rs.3,43,000/-	
	50% of the award amount	Rs.1,56,500/-	-	-
	75% of the award amount	-	Rs.2,57,250/-	Enhanced by Rs.1,00,750/-

11.The Tribunal has awarded compensation along with the interest at the rate of 9% per annum which is excessive and hence the rate of interest is hereby reduced to 7.5% per anum.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,13,000/- is hereby enhanced to Rs.3,43,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit 75% of the enhanced award amount now determined by this Court i.e., Rs.2,57,250/- 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

vsn
To

1. The Motor Accidents Claims Tribunal
Special Subordinate Court, Krishnagiri.

+1 cc to M/s.Doss and viswa, Advocate Sr.No. 9287
+1 cc to M/s.T.Ravichandran, Advocate Sr.No. 9461

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BS (CO)
RMP (22/03/2021)

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