



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

C.M.A.No.530 of 2017

Sheik Shaffiee

...Appellant/Claimant

Vs.

1.M.Abdul Latheef, ANT Transport, No.5B,
Janaki Ammal Street,
Rangarajapuram, Kodambakkam.
Chennai - 24.

2.M/s.Oriental Insurance Company Ltd.,
T.P.Cell, No.115, Prakasam salai,
Chennai - 108.

3.Venkarata Reddy

4.M/s.ICICI Lumboard General Insurance Co. Ltd.,
No.1,Village Road, Nungambakkam,
Chennai - 34.

...Respondents/Respondents

***Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.11.2014 made in M.C.O.P. No. 3197 of 2009 on the file of the Motor Accident Claims Tribunal, V Judge, Small Causes Court, Chennai.**

**For Appellant : Mr.N.M. Elumalai
For R1 : Vacated
For R2 : Mr.K. Vinod
For R3 & R4 : Claim Petition dismissed as
against these Respondents**

J U D G M E N T

Dissatisfied with the quantum arrived at by the Tribunal at Rs.8,77,500/- and also fixing contributory negligence at 25% on the appellant/claimant, the appellant/claimant is before this Court.



2.The case of the appellant/claimant is that on 20.05.2009 at about 15.00 hours on Piler Tirupathi Road, near Varagundiapalli Cross, Piler Mandal, Chittoor District, Andhra Pradesh, when the claimant was traveling as a passenger in the bus bearing Registration No.AP-03-Y-0280 belonging to the third respondent and insured with the fourth respondent, the bus was hit by the Diesel Tanker Lorry belonging to the first respondent and insured with the second respondent Insurance Company, bearing Registration No.AP-03-T-3253 from behind, due to which the claimant/appellant who was sitting at the back side of the bus, sustained amputation of his right arm above elbow level and grievous injuries all over the body. Claiming that the second and fourth respondents herein are vicariously liable to compensate the claimant, the appellant/claimant has filed a claim petition claiming a sum of Rs.15,00,000/- before the Tribunal.

3.The Tribunal, on a consideration of the oral and documentary evidence adduced before it, has fixed 75% negligence on the second respondent herein and 25% as contributory negligence on the claimant himself, observing that the claimant has contributed to the accident and dismissed the claim petition as far as R-4 is concerned.

4. Heard both sides.

5. The learned counsel for the appellant/claimant has submitted that the contributory negligence fixed at 25% on the claimant is without any basis and the same has to be set aside. He further submitted that Ex.P1-FIR shows that the negligence was only on the part of the driver of the lorry and that the claimant / appellant has not at all contributed to the accident and hence fixing of contributory negligence by the Tribunal at 25% on the claimant is against Ex.P1-FIR; that the monthly income taken by the Tribunal at Rs.5,000/- is incorrect as the claimant was earning a sum of Rs.8,000/- per month at the time of accident as a mobile phone serviceman and he was aged 16 years; that the Tribunal has erred in not awarding any amount towards marital prospects, as the appellant was aged 16 years at the time of accident and his right hand was amputated above elbow level which caused mental agony and affected his marriage life in total; and in any event the Tribunal ought to have entertained the claim petition in total at Rs.15,00,000/-.

6.Per contra, the learned counsel for the second respondent/Insurance Company submitted that the Tribunal has analysed each and every aspects, the documents produced by both

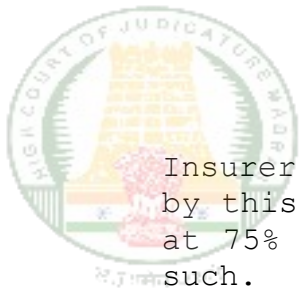


sides as well as the evidence on record and has fixed the negligence at 75% and 25% on the Insurer and the claimant, which does not require any interference by this Court; that the amount awarded towards loss of earning as well as the permanent disability are in consonance with the settled principles of law, as in the year 2009 such amounts were only awarded, invariably; that the Tribunal has also awarded a sum of Rs.1,50,000/- towards permanent disability and Rs.50,000/- towards loss of amenities and hence it cannot be contended by the claimant that the amount awarded under each and every heads is on the lower side. He also submitted that the Tribunal has taken into consideration the evidence and documents on record and has awarded compensation, which is nothing but just and hence interference of the same is uncalled for.

7. This Court has considered the said submission made by the learned counsel for both sides and perused the materials available on record.

8. At the outset, it has to be pointed out that the Tribunal has taken into account the contents of Ex.P-1-FIR and has observed that the principle of preponderance of probability and strict proof of evidence is not required. The Tribunal has also taken into consideration the principles laid down in Ravi Kapur v. State of Rajasthan, reported in (2012) 9 SCC 284, and has observed in paragraph 7 of its award that negligence means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs guided by similar considerations. Negligence is not an absolute term but is a relative one. The Tribunal has also observed that the first respondent remained exparte, thereby indirectly admitting the negligent act of his driver. Therefore, an adverse inference has been drawn upon the driver and held that the accident had happened only due to the rash and negligent driving of the driver of the Tanker Lorry. Further, the Tribunal has taken into the account the statement of the claimant/appellant about the occurrence wherein the claimant who sat at back of the right side seat by keeping his right elbow on the bending of the windows, sustained cut and his right hand was severed due to hit by the bus and thus the Tribunal has observed that the claimant also contributed to the accident to some extent.

9. This Court is of the view that the Tribunal has analysed the documents, more especially the basic document, viz., the FIR and evidence of PW1 claimant in a threadbare manner and has fixed the negligence at 75% and 25% on the



Insurer and the claimant which does not require any interference by this Court. Thus, the findings of the Tribunal on negligence at 75% on the Insurer and 25% on the appellant are confirmed as such.

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10. As far as the quantum of compensation is concerned, the Tribunal has awarded the total compensation as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Medical Expenses	5,000
Transportation and extra nourishment	50,000
Attender charges	5,000
Loss of earnings	8,10,000
Permanent disability	1,50,000
Pain and suffering	1,00,000
Loss of amenities	50,000
Total Compensation	11,70,000

11. The monthly income taken by the Tribunal to arrive at the loss of earning was Rs.5,000/- per month. However, during the year 2009, for even an unskilled worker, the Supreme Court has taken the monthly income at Rs.6,500/-. It is not in dispute that the petitioner was doing mobile phone service and he was aged 16 years at the time of accident. It is to be noted that had he not been met with the accident, he would have earned a decent money after some years. Hence this Court is of the opinion that taking a sum of Rs.6,500/- per month as monthly salary would be the just compensation payable to the claimant/appellant. Hence, taking Rs.6,500/- per month and adding 50% towards future prospective increase in income, the monthly contribution by the claimant would be Rs.9,750/-. The Tribunal has rightly adopted the multiplier of 18, since the claimant was aged 16 years at the time of accident. Since the claimant being bachelor, 50% has to be deducted towards his personal and living expenses. By doing so, the loss of earning to the appellant would be Rs.10,53,000/- (Rs.9,750x12x18 (-) 50%). Thus, this Court is of the view that awarding a sum of Rs.10,53,000/- towards loss of earning in the place of Rs.8,10,000/- would be just compensation payable to the claimant.



12. It is not in dispute that P.W2 has stated in his evidence that there was dismemberment of right arm at the level upper 1/3rd and lower 2/3rd. The claimant has difficulty while lifting objects and his disability is total and permanent one, for which P.W.2-Doctor has assessed 80% disability; Ex.P-6 is the disability certificate issued by the Doctor. Though he has deposed that there is no use in fixing the artificial right hand, he has admitted that he has assessed 30% higher. The Doctor has stated that the claimant would be having loss of function of his right hand. The said plea was also supported by the evidence and affidavit filed by the doctor. Hence, it is evident that for the remaining life, the claimant will suffer Trauma or not able to do his normal work as before. In such circumstances, the Tribunal ought to have awarded some amount towards loss of expectation of life. In such view of the matter, a sum of Rs.40,000/- is awarded towards loss of expectation of life.

13. This Court is of the view that the rest of the amounts awarded by the Tribunal as stated in Paragraph No.8, supra, have been awarded by the Tribunal, based on the settled principles of law, probabilities of the case and evidence on record and hence they are confirmed as such.

14.The details of the modified compensation are as follows:

Heads	Amount awarded by this Court (Rs.)
Medical Expenses	5,000
Transportation and extra nourishment	50,000
Attender charges	5,000
Loss of earnings	10,53,000
Loss of expectation of life	40,000
Permanent disability	1,50,000
Pain and suffering	1,00,000
Loss of amenities	50,000
Total Compensation	14,53,000
75% of the compensation payable to the claimant/appellant	10,89,750



14.1. Thus, the appellant / claimant is entitled to the modified compensation of Rs.10,89,750/- with interest at the rate of 7.5% per annum from the date of claim petition. It is made clear that the appellant / claimant is not entitled for interest for the compensation amount, in respect of the period of delay in filing this appeal.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal. It is also made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount.

Sd/-

Assistant Registrar(I)

Dated: 23.02.2022

*** Corrected as per order**

letter dated 15.03.2022

sd/- Sub Assistant Registrar

Dated: 16.03.2022

//True copy//

Sub Assistant Registrar

srk

To

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

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

To be substituted to
the order already
despatched on
04/03/2022

C.M.A.No.530 of 2017

PP(CO)

SP(25/02/2022)

SP(16/03/2022)