

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.83 of 2017

Jambulingam

.. Appellant/Claimant

Vs.

1.Durai Ramasamy

2.The United India Insurance Co. Ltd.,

Periyakadai Veedhi

Tharapuram.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 16.11.2015 made in M.C.O.P.No.58 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Tharapuram.

For Appellant : Mr.N.S.Sivakumar

For Respondents : Mr.C.Paranthaman for R2
No Appearance for R1

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 16.11.2015 made in M.C.O.P.No.58 of 2012 on the file of the Motor Accident Claims Tribunal/III Additional District Court, Tharapuram.

2. The appellant is the claimant in M.C.O.P.No.58 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tharapuram. He filed the said claim petition claiming a sum Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.10.2011.

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 the bus bearing Registration No. TN 33 AZ 9333 belonging to the 1st respondent, insured with the second respondent as well as negligent act on the part of the appellant, fixed negligence as 50:50 on the part of both the appellant as well as the driver of the bus, awarded sum of Rs.3,06,763/- and directed the second respondent-

Insurance Company to pay 50% of the award amount i.e., Rs.1,53,382/- as compensation to the appellant.

4. Challenging 50% contributory negligence fixed on the appellant and 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/claimant contended that the Tribunal erred in fixing 50% contributory negligence on the part of the appellant. The Tribunal ought to have fixed entire negligence on the part of the driver of the bus as the accident occurred only due to the rash and negligent driving by the driver of the bus. The Tribunal has failed to consider that the criminal case, which was registered against the appellant/claimant was falsified and the judgment rendered by the Criminal Court is marked as Ex.P5. The second respondent/Insurance Company did not examine the driver of the bus or any other independent eyewitness to substantiate their claim that the accident has occurred only due to the negligence on the part of the appellant. P.W.2 - Doctor assessed disability of the appellant as 25% and issued disability certificate which is marked as Ex.P10. The accident occurred in the year 2014 and the amount awarded by the Tribunal under the head, disability at the rate of Rs.2,000/- per percentage of disability is meagre. The Tribunal awarded a meagre compensation towards loss of earning only for a period of four months. The Tribunal has failed to award any amounts towards attendant charges, damage to clothes and loss of amenities. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside 50% of contributory negligence fixed on the part of the appellant as well as for enhancement of compensation.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellant himself has invited the accident by riding his motorcycle without keeping distance from the bus. The accident occurred only due to negligent act on the part of the appellant and hence, the Tribunal rightly fixed 50% contributory negligence on the part of the appellant, based on the First Information Report/Ex.P.1. The Tribunal considering the nature of injury, treatment taken by the appellant and disability assessed by the Doctor/P.W.2, awarded compensation towards disability at the rate of Rs.2,000/- per percentage which is not meagre. The Tribunal, in the absence of any material evidence to prove the avocation and income of the appellant, fixed a sum of Rs.5,000/- per month as notional income. Considering the nature of injuries and the treatment taken by him, the Tribunal has awarded a sum of Rs.20,000/- towards loss of income for 4 months. The same is

not meagre. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent-Insurance Company and perused all the materials available on record.

9. It is the contention of the appellant that the accident has occurred due to the rash and negligent driving by the driver of the bus belonging to the first respondent and insured with the second respondent. To prove the said contention, the appellant examined himself as P.W.1 and marked First Information Report, which was registered against the driver of the bus belonging to the first respondent. The second respondent/Insurance Company contended that the appellant without keeping the distance, drove the vehicle in a rash and negligent manner and dashed behind the bus. The second respondent has not let in any evidence, to substantiate their contention that only the appellant was negligent in causing the accident. In view of the same, the Tribunal fixing 50% negligence on the part of the appellant is erroneous and the same is liable to be set aside and it is accordingly set aside.

10. As far as the quantum of compensation is concerned, it is seen from the materials and record that the appellant has suffered 25% disability and marked the disability certificate as Ex.P10 to that effect. The Tribunal awarded a sum of Rs.50,000/- towards disability at the rate of Rs.2,000/- per percentage for 25% disability and the same is meagre. Considering the nature of injuries and disability suffered by the appellant, he is entitled to a sum of Rs.75,000/- towards disability, by awarding a sum of Rs.3,000/- per percentage for 25% disability. The appellant was working as an agriculturalist and was earning a sum of Rs.10,000/- per month. In the absence of any material evidence, the Tribunal rightly fixed the salary of the appellant at Rs.5,000/- and granted a meagre amount towards loss of income for a period of four months. Due to the injuries sustained, the appellant would not have attended his work atleast for a period of eight months. Hence, he is entitled to a sum of Rs.40,000/- (Rs.5,000/- x 8) towards loss of income. The appellant has taken treatment as in-patient for merely 11 days. The Tribunal has failed to award any amount towards attendant charges. Considering the period of treatment, the appellant is entitled for a sum of Rs.15,000/- towards attendant charges. The Tribunal awarded a meagre amount towards pain and

sufferings and the same is hereby enhanced to Rs.25,000/-. The Tribunal has not awarded any amount towards loss of amenities and loss of damage to clothes. Hence, this Court is inclined to award a sum of Rs.15,000/- towards loss of amenities and Rs.3,000/- towards loss of damage to clothes. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are confirmed.

11.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 or reduced
1.	Disability	50,000	75,000	Enhanced
2.	Medical Expenses	2,11,763	2,11,763	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Loss of income	20,000	40,000	Enhanced
5.	Pain and sufferings	15,000	25,000	Enhanced
6	Damages to clothes	-	3,000	Granted
7.	Attendant charges	-	15,000	Granted
8.	Loss of amenities	-	15,000	Granted
	Total	Rs.3,06,763/-		
	50% of the award amount	Rs.1,53,382/-	Rs.3,94,763/-	Enhanced by Rs.2,41,381/-

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,06,763/- is hereby enhanced to Rs.3,94,763/- 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 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. On such deposit, the appellant/claimant 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(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The III Additional District Court,
Tharapuram.

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

+1cc to Mr.N.S.Sivakumar , Advocate SR.No. 1691

+1cc to Mr.C.Paranthaman, Advocate SR.No. 1665

C.M.A.No.83 of 2017

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A.SK(24/09/2020)

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