

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4507 of 2019

S.Mahendiran

.. Appellant /Petitioner

Vs.

1.V.C.Sakthivel

2.The United India Insurance Co. Ltd.

Motor Third Party Hub

Silingi building, 4th floor

No.134, Greams road

Chennai-600 006.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2019 made in M.C.O.P.No.6077 of 2016 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.S.Arunkumar

R1 : Remained Exparte
before Tribunal

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 10% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 16.07.2019 made in M.C.O.P.No.6077 of 2016 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

2.The appellant is claimant in M.C.O.P.No.6077 of 2016 on the file of Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.09.2016.

3.According to the appellant/claimant, on the date of accident, i.e., on 17.09.2016 at 6.25 hours, while the appellant was riding in his motorcycle along GST road near Tambaram old check post from West to East direction, the Maruthi van (ambulance), which came from South to North direction, driven by the 1st respondent in a rash and negligent manner, dashed against the motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation.

4.The 1st respondent owner-cum-driver of the Maruthi van (ambulance) remained exparte before the Tribunal.

5.The 2nd respondent/Insurance company filed counter statement denying the averments made by the appellant and contended that the accident has occurred due to negligence on the part of the appellant. The appellant has to prove that he possessed valid driving license at the time of accident and he had valid Registration Certificate for the Maruthi Van (ambulance). The 2nd respondent/Insurance Company has also denied the age, avocation and income of the appellant, the appellant is not entitled for any compensation and hence, the 2nd respondent is not liable to indemnify the 1st respondent and prayed for dismissal of the claim petition against the 2nd respondent.

6.Before the Tribunal, the appellant examined himself as P.W.1 and the Doctor who treated the appellant was examined as P.W.2 and marked nine documents as Exs.P1 to P9. On the side of the 2nd respondent, one Senthilvel, Assistant Manager of the Insurance Company was examined as R.W.1 and marked four documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent/driver-cum-owner of the Maruthi van (ambulance) as well as the appellant, fixed 90% contributory negligence on the part of the 1st respondent and 10% on the part of the appellant, awarded a sum of Rs.96,959/- as compensation to the appellant and directed the 2nd respondent/Insurance Company being insurer of the said

Maruthi van to pay a sum of Rs.87,263/- i.e. 90% of the award amount, at the first instance and recover the same from the 1st respondent.

8.The appellant has come out with the present appeal challenging the portion of the award fixing 10% contributory negligence on the part of the appellant as well as for enhancement of compensation.

9.The learned counsel appearing for the appellant/claimant contended that the Tribunal erred in fixing 10% contributory negligence on the part of the appellant by considering Ex.R1/rough sketch. The Tribunal failed to note that in Ex.R1/rough sketch, it was mentioned that the place of occurrence was at extreme western side of the road. The Tribunal failed to consider that there is no evidence to show that while the appellant was crossing the road from West to East direction, the accident has occurred. The learned counsel further contended that the appellant sustained fracture of femur and medical malleolus. Due to the injuries, the appellant could not do the work as he was doing earlier. P.W.2/Doctor has assessed the disability of the appellant as 40%. The Tribunal without any reason, has reduced the disability to 20%. The Tribunal ought to have adopted multiplier method while awarding compensation towards disability. The appellant is still continuing treatment and the Tribunal ought to have awarded compensation towards future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability. In the absence of any documentary evidence to prove that the appellant suffered functional disability, the percentage method applied by the Tribunal is proper. The appellant has not produced any document to prove that he is still continuing treatment and therefore, he is not entitled to any compensation towards future medical expenses. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

12.The first issue to be decided in this appeal is that

whether the Tribunal is right in fixing 10% contributory negligence on the part of the appellant.

13. From the materials available on record, it is seen that while the Maruthi van (ambulance) was coming from South to North direction and the appellant, who rode in his motorcycle from West to East direction, tried to cross the road from West to East in the gap between the median, the accident has occurred. A perusal of Ex.R1/rough sketch reveals that the accident has occurred in the middle of the western side of the main road. The Tribunal considering Ex.R1/rough sketch, held that the appellant is negligent in trying to cross the road from West to East direction from the extreme western side of the road. Further, R.W.1, Assistant Manager of the Insurance Company, in his evidence has deposed that only the vehicle coming from southern side can take U-turn in the gap of the median and the vehicle coming in the western side is to use the ramp of the flyover on the western side of the main road to cross the road. The evidence of R.W.1 is not controverted by the appellant. The Tribunal considered all the materials available on record in proper perspective and rightly fixed 10% contributory negligence on the part of the appellant. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

14. As far as quantum of compensation is concerned, from the materials available on record, it is seen that the appellant has contended that he sustained fracture of femur and medical malleolus. Due to the injuries, the appellant could not do the work as he was doing earlier. The appellant has examined P.W.2/Doctor, who has assessed the disability of the appellant as 40% and marked Ex.P8/disability certificate & Ex.P9/x-ray to prove the nature of injuries sustained by him. The Tribunal reduced the disability to 20% holding that P.W.2 is not the Doctor who treated the appellant and he has not produced any working sheet and awarded a sum of Rs.60,000/- (Rs.3,000/- X 20%) towards disability at the rate of Rs.3,000/- per percentage of disability. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation for 40% disability. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. Therefore, the percentage method applied by the Tribunal is correct. The accident is of the year 2016 and a sum of Rs.2,000/- awarded by the Tribunal per percentage of disability is correct. Therefore, a sum of Rs.1,20,000/- (Rs.3,000/- X 40%) is awarded towards disability.

15. According to the appellant, he was aged 22 years at the time of accident and was earning a sum of Rs.500/- per day by working as mason. The appellant failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.8,000/- as monthly income of the appellant and awarded a sum of Rs.8,000/- towards loss of income for one month. The accident is of the year 2016 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.10,000/- is fixed as monthly income of the appellant. Considering the nature of injuries sustained by the appellant, he would not have attended his work atleast for a period of 6 months. Therefore, a sum of Rs.60,000/- (Rs.10,000/- X 6) is awarded towards loss of income for six months. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal towards pain & suffering, transportation, extra nourishment and loss of amenities are meagre and hence, the same are enhanced to Rs.20,000/- each towards pain & suffering, extra nourishment and loss of amenities and Rs.5,000/- towards transportation. The amounts awarded by the Tribunal towards medical expenses and damage to clothes 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 or reduced
1.	Disability	60,000	1,20,000	Enhanced
2.	Medical expenses	4,959	4,959	Confirmed
3.	Loss of income	8,000	60,000	Enhanced
4.	Pain and suffering	10,000	20,000	Enhanced
5.	Transportation	1,000	5,000	Enhanced
6.	Extra nourishment	2,000	20,000	Enhanced
7.	Damage to clothes	1,000	1,000	Confirmed

8.	Loss of amenities	10,000	20,000	Enhanced
9.	Attendant charges	-	10,000	Granted
	Total	96,959 90% of the award amount comes to 87,263	2,60,959 90% of the award amount comes to 2,34,863	Enhanced by Rs.1,47,600 /-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.87,263/- is hereby enhanced to Rs.2,34,863/- 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 90% of the enhanced award amount now determined by this Court i.e., Rs.2,34,863/- 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 at the first instance and recover the same from the 1st respondent/owner-cum-driver of the vehicle. 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

//True Copy//

Sub Assistant Registrar

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To

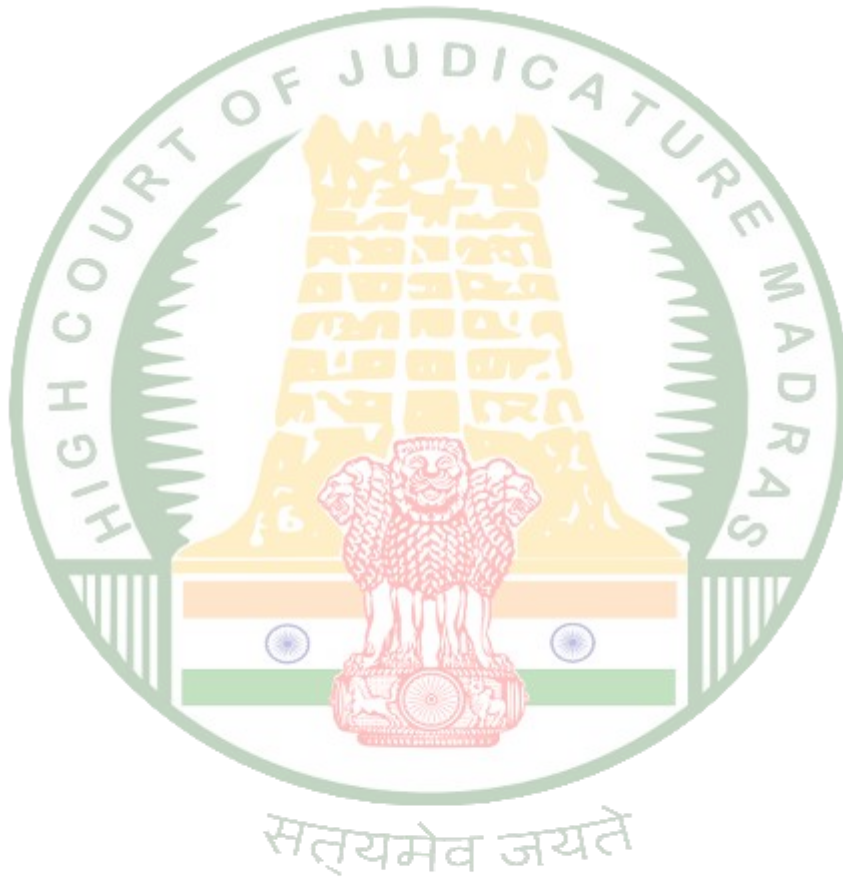
1. The IV Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to Mr.R.Nalliyappan, Advocate Sr.1682
+1cc to Mr.S.Arunkumar, Advocate SR.2309

C.M.A.No.4507 of 2019

EV (CO)
CB(16/09/2020)



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