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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.170 of 2021

N.Lakshmanan

.. Appellant

Vs.

1.The Village Evangelisation of India Mission,
No.15/33, Radha Krishna Nagar,
Thiruvottiyur,
Chennai - 600 019.

2.United India Insurance Company Limited,
Motor Third Party Claim Cell,
No.134, Greams Road,
Chennai - 600 006.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 14.02.2020 made in M.C.O.P.No.3270 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.C.Paranthaman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the contributory negligence fixed on the part of the appellant as well for enhancement of compensation granted by the Tribunal in the award dated 14.02.2020 made in M.C.O.P.No.3270 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.



2.The appellant is the claimant in M.C.O.P.No.3270 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.02.2015.

3.According to the appellant, on 14.02.2015 at about 21.00 hours, while he was riding the motorcycle bearing Registration No.TN 07 S 4933 from Kasimedu to West Mada Koil ATM centre in the North to South direction on the West Mada Koil Street, near H.P.Petrol Bunk (Sri Rajeshwari Agency), the driver of the car bearing Registration No.TN 04 T 8790 belonging to the 1st respondent drove the car without observing the Road Traffic Rules in a rash and negligent manner from South to North direction, dashed against the motorcycle rode by the appellant and caused the accident. In the accident, the appellant fell down from the motorcycle and sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the car respectively.

4.The 1st respondent-owner of the car remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company, being the insurer of the car filed counter statement and denied all the averments made by the appellant. The 2nd respondent-Insurance Company denied the manner of accident. The appellant only rode the uninsured motorcycle without valid driving license at the time of accident by violating the rules and regulations, pleaded guilty and paid fine of Rs.1,000/- for riding the uninsured motorcycle and Rs.500/- for riding the motorcycle without driving license. The owner of the motorcycle rode by the appellant has to be impleaded as necessary party in the claim petition. The 2nd respondent denied the age, avocation, income, nature of injuries and disability suffered by the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and 16 documents were marked as Exs.P1 to P16. The 2nd



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respondent-Insurance Company did not let in any oral and documentary evidence. Dr.K.Thanigaimani was examined as C.W.1 and the Disability Certificate issued by the Regional Medical Board, Government Stanley Hospital, Chennai was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the car belonging to the 1st respondent as well as due to negligence on the part of the appellant, fixed 90% negligence on the part of the driver of the car and 10% negligence on the part of the appellant for not possessing valid driving license at the time of accident, awarded a sum of Rs.3,42,200/- as compensation and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.3,07,980/- towards 90% of the award amount as compensation to the appellant.

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

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed 10% contributory negligence on the part of the appellant on the ground that he did not possess driving license at the time of accident. The accident occurred only due to the negligence on the part of the driver of the car belonging to 1st respondent and F.I.R. was registered against the driver of the car. The Tribunal ought to have fixed entire negligence on the part of the driver of the car belonging to 1st respondent. The appellant has taken treatment as inpatient for 8 days in two different spells from 14.02.2015 to 18.02.2015 and 02.03.2015 to 04.03.2015 at Apollo Hospital, Chennai. He was referred to the Regional Medical Board, Government Stanley Hospital, Chennai. The Regional Medical Board, Government Stanley Hospital, Chennai examined the appellant and certified that he suffered 20% disability and issued Ex.C1/disability certificate to that effect. The Tribunal granted only a sum of Rs.60,000/- towards disability at the rate of Rs.3,000/- per percentage of disability. The appellant was aged 52 years, working as Sub Inspector of Police at N4, Fishing Harbur Police Station, Kasimedu, Chennai and was earning a sum of Rs.40,000/- per month at the time of accident. The Tribunal ought to have granted



compensation for loss of income. Due to the injuries and disability suffered by the appellant in the accident, he could not do any work as he was doing earlier. A sum of Rs.20,000/- awarded by the Tribunal towards future medical expenses is meagre. The total compensation awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award fixing 10% contributory negligence on the part of the appellant and for enhancement of compensation.

10.Per contra, Mr.C.Paranthaman, learned counsel appearing for the 2nd respondent contended that the accident did not occur due to rash and negligent driving by the driver of the car belonging to 1st respondent as alleged by the appellant. The appellant only rode the uninsured motorcycle without driving license and caused the accident. The appellant is Sub Inspector of Police and the Tribunal ought to have fixed entire negligence on the part of the appellant and exonerated the 2nd respondent from its liability. The appellant has continued his job and he has not proved that his salary was reduced and he was on loss of pay. In the absence of any evidence, the appellant is not entitled for any compensation for loss of income. The appellant has taken treatment as inpatient for 8 days and the compensation awarded by the Tribunal under different heads are not meagre 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-Insurance Company and perused the entire materials on record.

12.It is the case of the appellant that while he was riding his motorcycle on 14.02.2015 at about 21.00 hours from Kasimedu to West Mada Koil ATM centre near H.P.Petrol Bunk (Sri Rajeshwari Agency), the driver of the car belonging to 1st respondent drove the car in a rash and negligent manner and dashed on the motorcycle and caused the accident. In the accident, the appellant sustained injuries and filed claim petition claiming compensation for the injuries. In support of his case, he examined himself as P.W.1, marked F.I.R. and Rough Sketch as Exs.P15 & P16 and other documents. On the other hand, it is the case of the 2nd respondent-Insurance Company that the accident did not occur as alleged by the appellant. The accident has occurred only due to the negligence on the part of the appellant, who rode the uninsured motorcycle without driving



license and caused the accident. The 2nd respondent did not examine any witness to prove their case that accident has occurred due to the negligence of the appellant. The appellant in cross examination admitted that he did not possess driving license and his vehicle was not insured at the time of accident. The appellant admitted that he paid fine of Rs.1,000/- for driving the uninsured vehicle and Rs.500/- for not possessing driving license. The appellant is a Sub Inspector of Police holding a responsible post. He has the duty to follow the statutory provisions and also he is duty-bound to see that others follow the statutory provision. In the present case, the appellant who is a Sub Inspector of Police, himself violated the statutory provision by riding the motorcycle without insurance and without driving license. The Tribunal considering the above materials, fixed only 10% contributory negligence on the part of the appellant. In view of the above materials, 10% contributory negligence fixed on the part of the appellant is not interfered with.

13.As far as quantum of compensation is concerned, the appellant failed to prove that he has suffered loss of income and he was on loss of pay. He has taken treatment as inpatient for 8 days in two different spells from 14.02.2015 to 18.02.2015 and 02.03.2015 to 04.03.2015 at Apollo Hospital, Chennai. The Tribunal considering the materials, granted compensation under different heads. The appellant was referred to the Regional Medical Board, Government Stanley Hospital, Chennai. The Regional Medical Board, Government Stanley Hospital, Chennai examined the appellant and certified that appellant suffered 20% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering Ex.C1/disability certificate, awarded a sum of Rs.60,000/- for 20% disability at the rate of Rs.3,000/- per percentage of disability and the same is meagre. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2015. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.80,000/- (Rs.4,000/- X 20% disability). Considering the nature of injuries and period of



treatment taken by the appellant, the amount awarded by the Tribunal towards attendant charges is meagre and the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the appellant, he would have suffered inconvenience and would be facing discomfort in his life. Hence, the appellant is entitled to a sum of Rs.15,000/- towards loss of amenities. The amounts awarded by the Tribunal under 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.	Disability	60,000/-	80,000/-	Enhanced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation	3,000/-	3,000/-	Confirmed
5.	Medical expenses	2,22,188.50/-	2,22,188.50/-	Confirmed
6.	Attendant charges	2,000/-	10,000/-	Enhanced
7.	Loss of future prospects	20,000/-	20,000/-	Confirmed
8.	Loss of amenities	-	15,000/-	Granted
	Total	Rs.3,42,188.50/- rounded off to Rs.3,42,200/-	Rs.3,85,188.50/- rounded off to Rs.3,85,200/-	Enhanced by Rs.38,700/- (Rs.3,46,680/-
	90% of the award amount	Rs.3,07,980/-	Rs.3,46,680/-	- Rs.3,07,980/-)

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal



at Rs.3,42,200/- is hereby enhanced to Rs.3,85,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit 90% of the award amount, (i.e., Rs.3,46,680/-) 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, to the credit of M.C.O.P.No.3270 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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

+1cc to M/s.C.Paranthaman, Advocate, S.R.No.8079

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.8202

C.M.A.No.170 of 2021

SSV(CO)
SB(03/09/2021)