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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA. No.2865 of 2012

Kathirvel,
S/o Arumugam

... Appellant/Petitioner

..VS..

1.R.Rajee,
S/o Raja Gounder,

2.The New India Assurance Co. Ltd.,
Divisional Office, Premier Complex,
Five Roads, Salem-4.

... Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.10.2011 made in M.C.O.P.No.62 of 2010, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Salem.

For Appellants : Mr.K.Kuppusamy
For Respondent No.2 : Mr.J.Chadran
For Respondent No.1 Given up

J U D G M E N T

Dissatisfied with the judgment and decree, dated 3.10.2011, passed by the tribunal awarding compensation of Rs.29,400/- along with interest at the rate of 7.5% per annum, the claimant is before this Court for enhancement of compensation.

2. It is is the case of the claimant/appellant herein that the appellant met with an accident on 24.08.2005 at about 12.00 p.m., when the appellant was riding a motorcycle bearing registration No.TN-45 Q 3583 and one Selvam was on pillion, at Saradha College road near Santham complex, a motorcycle bearing registration No.TN-29 A 5211 driven by its driver in a rash and negligent manner proceeding towards Asthampatti, hit the appellant's motorcycle resulting in the appellant and the pillion rider sustained fracture and multiple injuries. On



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complaint, case in Cr.No.414 of 2005 for the offence under Sec.279 and 337 of I.P.C. has been registered by the Salem Traffic Police. The appellant filed a claim petitioner before the tribunal, claiming compensation of Rs.3,00,000/- for the injuries sustained by him.

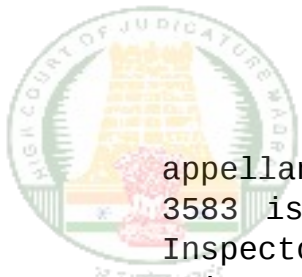
3. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.8, has fixed the contributory negligence of 60% on the part of driver of the motorcycle bearing registration No.TN-29 A 5211 and 40% on the part of the appellant and awarded total compensation of Rs.49,000/- under various heads. Out of Rs.49,000/-, the appellant is entitled for a sum of Rs.29,400/- since contributory negligence of 40% fixed on the part of the appellant.

4. Heard the learned counsel appearing for the appellant/ claimant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

5. The learned counsel for the appellant submitted that the tribunal ought to have fixed the permanent disability at 36% instead of 25%. The appellant has marked disability certificate Ex.P2 and Dr.Sreethar deposed before the tribunal that he assessed the disability to the claimant at 36% . The tribunal without any basis fixed the permanent disability at 25%. Therefore the award passed by the tribunal is liable to be modified.

6. The learned counsel for the Insurance Company would submit that the appellant herein is the pillion rider of the motor bike bearing Reg.No. TN-45-Q-3583 and the rider of the said motor bike driven the bike in a rash and negligent manner and caused the accident and due to which, a criminal case was also registered against him and charge sheet has also been filed. Therefore, the insurance company is not liable to pay any amount and the appellant herein being the pillion rider of the above said bike, is not entitled to any compensation. Hence the appeal is liable to be dismissed.

7. Though the learned counsel for the appellant strongly objected the contributory negligence fixed at 40% by the tribunal, from a perusal of Ex.1 to 6, it reveals that the



appellant and rider of the motor bike bearing Reg.No. TN45-Q-3583 is also responsible for the accident and the Special Sub Inspector of Police/RW1 in his evidence deposed that a case in Crime No.62/2010 has been registered against the appellant for his involvement in the accident. It is mentioned in the Motor Inspection Report/Ex.P5 that the front side of the bullet motor bike bearing Reg.No. TN-29-A-5211, which was coming in the opposite direction was damaged, therefore it is clear that the both the vehicles have dashed against each other. The tribunal by considering the all these aspects and supporting documents and evidence has fixed the contributory negligence as against the appellant at 40% and 60% as against the 1st and 2nd respondents. This Court finds no error in respect of contributory negligence fixed by the tribunal. The arguments advanced by the learned counsel for the appellant against the contributory negligence cannot be accepted, the same is confirmed.

8. Insofar as quantum of compensation is concerned, though the appellant's involvement in the accident is proved, considering the contributory negligence, this Court is of the view that it would be fair to enhance the compensation to some extent by taking note of the injuries sustained and the consequential expenses incurred by him. As per Ex.P2-Wound Certificate, the appellant had taken treatment from 25.08.2005 to 01.09.2005 as inpatient and he sustained bone fracture on his left leg. Ex.P2- Discharge summary issued by the Mohan Kumaramangalam Medical College Hospital also reveal the said fact. Further as per Ex.P10- Disability Certificate, the appellant had sustained 35% permanent disability. Considering the nature of fracture and injuries sustained by the appellant, this Court confirms the disability at 35% assessed by PW3/Dr.Sreethar and by fixing Rs.1200/- per disability, compensation enhanced to Rs.42.000/- for Disability. Like wise the compensation awarded under the heads Medical expenses, extra nourishment, transport expenses and pain and suffering are enhanced. The sum awarded under the head loss of income is confirmed and a sum of Rs.5,000/- is granted under the head loss of amenity. Accordingly, this Court modifies the compensation under various heads as follows;



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Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court
Disability (25 x Rs.1200)	30,000/-	42,000/- (35x1200)
Pain and suffering	7,000/-	10000/-
Loss of income (one month)	4,000/-	4000/-
Medical expenses	3,000/-	6000/-
Extra Nourishment	3,000/-	10000/-
Transportation	2,000/-	5000/-
Loss of amenity	--	5000/-
Total	49,000/-	82,000/-

Since the contributory negligence is fixed at 40% on the appellant, he is eligible for compensation only at 60%. Therefore, out of the total enhanced compensation of Rs.82,000/-, the appellant is entitled for a sum Rs.49,200/-.

9. In the result, this Civil Miscellaneous Appeal is partly allowed, by enhancing the total amount of compensation. The appellant is entitled to withdraw a sum of Rs.49,200/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

10. The 1st and 2nd respondents shall jointly and severally deposit the enhanced compensation amount, as awarded by this Court, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. No costs.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

1. The Judge,
The Motor Accidents Claims Tribunal
Chief Judicial Magistrate Court, Salem

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

CMA.No.2865 of 2012

VG II(C0)
B.VC (17/09/2021)