



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.3334 of 2012

A.Zakir Hussain

... Claimant/Appellant

..Vs..

1. D.Sudhakar

2. The New India Assurance Co. Ltd.,
No.46, Moore street,
Chennai - 1.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 7.10.2010 made in M.C.O.P.No.354 of 2006 on the file of VI Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondent No.1 : Notice unserved
For Respondent No.2 : Mrs.S.R.Sumathy

J U D G M E N T

Aggrieved by the judgment and decree, dated 7.10.2010, made in M.C.O.P.No.354 of 2006, by the Motor Accident Claims Tribunal awarding 50% of the compensation amount viz., Rs.55,185/- along with interest at the rate of 7.5% per annum, the claimant is before this Court challenging the contributory negligence fixed by the tribunal as well as for enhancement of compensation.

2. It is is the case of the claimant/appellant herein that on 28.10.2005 at about 1.10 p.m., the claimant/appellant herein met with an accident when he was riding a motorcycle bearing registration No.TN-01 V-3404 slowly and cautiously in Kamarajar Salai from Adyar towards Chintadripet, from South to North direction, a Tata Sumo Car bearing registration No.TN-22 AH-1332 came form the opposite direction in a rash and negligent manner and suddenly turned to its right when there is no signal to enter the walajah salai and hit against the appellant's motorcycle, thereby the appellant sustained grievous injuries.



The first respondent as the owner and the second respondent as insurer are jointly and severally liable to pay compensation. The appellant claimed a total compensation of Rs.1,25,000/- from the respondents.

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3 In the counter affidavit filed by the second respondent, it is stated that it is clearly mentioned in the Accident Register that 'Breath smell of alcohol while being brought to causality. As such, the appellant under the influence of alcohol, driven the vehicle in a rash and negligent manner. Therefore, the appellant is not entitled to get compensation from the Insurance company.

4 The Tribunal, based on the oral and documentary evidence Exs.P1 to P.9, has arrived a sum of Rs.1,10,370/- as total compensation and the since the appellant is equally contributed to the accident, awarded 50% of the total award amount of Rs.55,185/- to the appellant. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Disability 30% x Rs.2000/-	60,000/-
Loss of Income for a period of 3 months (4500 x 3)	13,500/-
Pain and suffering	10,000/-
Extra Nourishment	5,000/-
Medical expenses	18,868/-
Transportation	3,000/-
Tota	1,10,370/-
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5. Heard the learned counsel appearing for the claimant/ appellant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

6. Though appeal is filed against the 50% contributory negligence on the part of the appellant fixed by the tribunal as well as the quantum of compensation, learned counsel appearing for the appellant restricted his arguments only in respect of the quantum of compensation. Therefore, insofar as the liability is concerned, the award of the tribunal is confirmed.

7. According to the learned counsel appearing for the appellant, the appellant was a Photographer and earning Rs.5,000/- per month at the time of accident. According to the appellant, the appellant was prevented from doing regular work



for a period of six months. The loss of income awarded by the tribunal for a period of three months is not sufficient and the same has to be extended for a period of six months. Insofar as other heads also, according to the learned counsel appearing for the appellant, the tribunal has awarded a meagre amount to the appellant viz., pain and suffering, Transportation, Extra Nourishment and no amount was awarded towards loss of amenities. Therefore, the compensation awarded by the tribunal requires substantial enhancement.

8. Per contra, the learned counsel appearing for the Insurance Company would submit that based on the oral and documentary evidence, the tribunal has rightly determined the compensation to the appellant. P.W.2 assessed that the appellant sustained 35% partial permanent disability and the tribunal has fixed disability at 30% and awarded Rs.2000/- x 30% = 60,000/- to the appellant towards partial permanent disability. Apart from that the tribunal also awarded reasonable compensation under various heads. Therefore, there is no warrant to interfere with the award.

9. Due to the accident, the appellant sustained multiple injuries all over the body. The appellant was examined by P.W.2 Dr.K.J.Mathiazhagan had deposed before the Court below that the appellant sustained fracture at the right great toe, right foot, dislocation of right knee and multiple injuries all over the body. Ex.P4 Discharge summary shows that the appellant sustained partial amputation of right big toe, fracture of right II, III Proximal phalynx of meta tarsal bone, dislocation of right knee and also head injury. Considering the fact that the appellant was a Photographer and he was earning Rs.5000/- per month, sustained partial amputation of right big toe, fracture and dislocation of right knee, this Court is of the view that the appellant is entitled for loss of income for a period of four months.

10. Insofar as the other heads are concerned, according to the learned counsel appearing for the appellant, tribunal has awarded meagre amount which requires enhancement. To that extent, the compensation awarded by the tribunal is modified on various heads and awarded as follows:

Heads	Compensation awarded by the Tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)	Difference Amount in Rs.
Disability 30% x 2000/-	60,000/-	60,000/-	--



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Heads	Compensation awarded by the Tribunal Rs.	Compensation enhanced/ awarded by this Court (Rs.)	Difference Amount in Rs.
Loss of Income 4500 x 4	13,500/-	18,000/-	4,500/-
Pain & suffering	10,000/-	20,000/-	10,000/-
Transportation	3,000/-	5,000/-	2,000/-
Extra nourishment	5,000/-	10,000/-	5,000/-
Medical expenses	18868.06	18868.06	--
Loss of amenities	--	10,000/-	10,000/-
Attendent charges	--	9,000/-	9,000/-
Total :	1,10,370/-	1,50,868/-	40,500/-

The compensation awarded by the tribunal is enhanced to the aforesaid extent. The appellant is entitled for Rs.75,000/- towards 50% of the compensation amount as modified by this Court since the appellant is equally responsible for the accident. Except the above modification, the award passed by the tribunal is confirmed.

11.The second respondent/Insurance company is directed to deposit the award amount of Rs.75,000/- (Rupees seventy five thousand only) after deducting the amount if already deposited before the tribunal, along with interest at the rate of 7.5% p.a. from the date of petition till realization, within a period of eight weeks from the date of receipt of copy of the order. On such deposit being made by the second respondent/ Insurance company, the appellant is permitted to withdraw the amount by filing appropriate application.

12. In the result, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

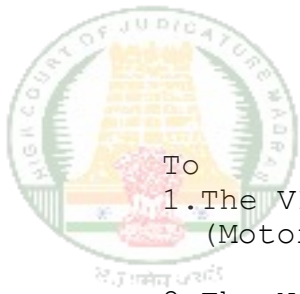
Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Small Causes Court
(Motor Accidents Claims Tribunal) Chennai.

2.The New India Assurance Co. Ltd.,
No.46, Moore street, Chennai - 1.

3.The Section Officer,
V.R.Section, Madras High Court, Chennai-104.

+2cc to Mr.V.Mohan Choudry, Advocate, S.R.No.5261

Civil Miscellaneous Appeal No.3334 of 2012

RSV(CO)
CB(24/09/2021)