



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.07.2021	Delivered on: 02.09.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1650 of 2020
and
C.M.P.No.12151 of 2020

1.N.Kathirvel
2.P.Palanivel

...Appellants/Respondents

Vs.

R.Sethuraman

...Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2019 made in M.C.O.P.No.95 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellants : Mr.P.Jagadeesan
for Mr.P.Kannan Kumar

For Respondent : Mr.N.Manokaran

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award of the Tribunal dated 24.09.2019 made in M.C.O.P.No.95 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

2.The appellants are the respondents 1 & 2 in M.C.O.P.No.95 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. The respondent filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.05.2015.

3.According to the respondent, on 10.05.2015 about 04.30 P.M., while he was riding the motorcycle bearing Registration No.TN 38 D 7473 along with one Kumar as pillion rider from South to North direction on the extreme left side of the Avalpoondurai - Vellode road near Jadarpalayam Pirivu, the 1st appellant drove



the Maruthi car bearing Registration No.TN 02 F 5738 from the opposite direction without following traffic rules in a rash and negligent manner, came to the extreme wrong side of the road and hit against the motorcycle driven by the respondent and caused the accident. In the accident, the respondent was thrown away from the motorcycle and sustained laceration 4 X 1 cm over dorsum of left foot on II and IIIrd MC Bone, contusion, tenderness, deformity over the left leg L/4 swelling 10 X 6 cm, fracture of left leg both bone and multiple injuries all over the body. Immediately after the accident, the respondent was taken to Kavitha Hospital, Vellode and thereafter he was shifted to S.G.Met Hospital, Erode, where he has taken treatment as inpatient from 10.05.2015 to 19.05.2015 and underwent surgery at his left leg and plates and screws were fixed. Therefore, he filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the car respectively.

4.The 2nd appellant filed counter statement and the same was adopted by the 1st appellant. The appellants denied the manner of accident as alleged by the respondent. According to the appellants, the 1st appellant drove the Maruthi Car bearing Registration No.TN 02 F 5738 from North to South direction on the Vellode to Avalpoondurai road at a moderate speed by adhering the traffic rules. While he was nearing Jadarpalayam Pirivu, the respondent who was riding the motorcycle bearing Registration No.TN 38 D 7473 along with one Kumar as pillion rider under the influence of alcohol in an inebriated mood, without wearing helmet in a rash and negligent manner, without following the road traffic rules and unmindful of the oncoming vehicle. On seeing the same, the 1st respondent slowed down the car and swerved to the left side of the road. But the respondent who was coming in an uncontrollable speed in the wrong direction, dashed against the car and invited the accident. On account of the accident, the left side of the car got damaged. The accident occurred on the eastern side of north - south road and the Police official wrongly prepared rough sketch as the accident occurred at the western side of the road. Immediately after the accident, the 1st appellant gave a complaint before the Vellode Police Station, but no action was taken by the Police. The Police erroneously filed charge sheet against the 1st appellant before the Judicial Magistrate, Perundurai. The appellants denied the age, avocation, income, nature of injuries, disability, period of treatment taken by the respondent and the medical expenses incurred by him. In any event, the quantum of compensation claimed by the respondent is highly excessive and prayed for dismissal of the claim petition against the appellants.



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5. Before the Tribunal, the respondent examined himself as P.W.1, Dr.K.Periyasamy was examined as P.W.2 and 15 documents were marked as Exs.P1 to P15. On behalf of the appellants, the 1st appellant examined himself as R.W.1, one Gowrisankar was examined as R.W.2 and one document was marked as Ex.R1.

6. 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 car belonging to 2nd appellant and directed the respondents to pay a sum of Rs.4,10,000/- as compensation to the respondent.

7. To set aside the said award dated 24.09.2019 made in M.C.O.P.No.95 of 2017, the appellants have come out with the present appeal.

8. The learned counsel appearing for the appellants contended that the Tribunal erroneously held that the accident has occurred only due to the negligence on the part of the driver of the car belonging to 2nd appellant and erred in fastening the liability on the part of the owner of the car. The Tribunal ought to have fixed the liability on the part of the Insurance Company of the motorcycle driven by the respondent. The rider and the pillion rider of the motorcycle were not wearing the helmet and also were in a drunken mood at the time of accident. The accident has occurred only due to the negligence on the part of the respondent and hence, the appellants are not liable to pay the compensation to the respondent. The Tribunal failed to properly consider the evidence of R.W.1 and R.W.2. The respondent has taken First Aid Treatment at Kavitha Hospital and he has purposefully not produced any documents with regard to first aid treatment for not revealing the fact that he consumed alcohol. The Tribunal failed to consider the complaint given by the appellants before the Vellode Police Station. P.W.2/Doctor who certified that the respondent suffered 32% disability has not given any treatment to the respondent. The Tribunal erroneously considering the disability certificate, has awarded excessive sum of Rs.96,000/- for disability. The medical bills awarded by the Tribunal at Rs.2,05,000/- is highly excessive. The respondent has not proved his avocation and income by producing valid documents. In the absence of any material evidence with regard to avocation and income, a sum of Rs.45,000/- awarded by the Tribunal towards loss of earning for five months by fixing a sum of Rs.9,000/- per month as notional income is excessive. The total compensation awarded by the Tribunal at Rs.4,10,000/- is excessive and prayed for setting aside the award passed by the Tribunal.

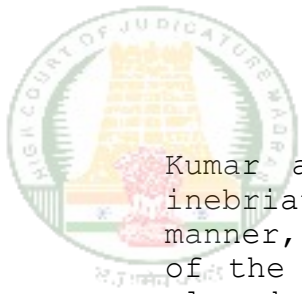


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9. Per contra, the learned counsel appearing for the respondent contended that the 1st respondent only drove the car in a rash and negligent manner and dashed against the motorcycle and caused the accident and the Tribunal rightly fixed negligence on the part of the 1st appellant and there is no negligence on the part of the respondent. In the accident, the respondent sustained laceration 4 X 1 cm over dorsum of left foot on II and IIIrd MC Bone, contusion, tenderness, deformity over the left leg L/4 swelling 10 X 6 cm, fracture of left leg both bone and multiple injuries all over the body. P.W.2/Doctor examined the respondent and certified that the respondent suffered 32% disability and issued Ex.P13/disability certificate to that effect. The Tribunal considering the same, has awarded a sum of Rs.96,000/- for disability and the same is not excessive. At the time of accident, the respondent was aged 28 years, working as Electrician in Union Office, Poondurai Semur and was earning a sum of Rs.10,000/- per month. But, the Tribunal has fixed a meagre sum of Rs.9,000/- per month as notional income of the respondent and awarded a meagre sum of Rs.45,000/- as compensation for loss of earning for five months. The respondent has taken treatment as inpatient in the SGMET Hospital from 10.05.2015 to 19.05.2015, Ganga Medical Centre and Hospital from 27.11.2015 to 05.12.2015. The Tribunal has not awarded any amount for attendant charges and future medical expenses. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent and perused the entire materials on record.

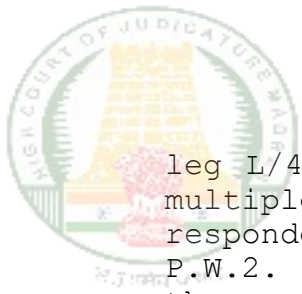
11. It is the case of the respondent/claimant that on 10.05.2015 about 04.30 P.M., while he was riding the motorcycle bearing Registration No.TN 38 D 7473 along with one Kumar as pillion rider from South to North direction on the extreme left side of the Avalpoondurai - Vellode road near Jadarpalayam Pirivu, the 1st appellant drove the Maruthi car bearing Registration No.TN 02 F 5738 from the opposite direction without following traffic rules in a rash and negligent manner, came to the extreme wrong side of the road and hit against the motorcycle driven by the respondent and caused the accident. To prove the said contention, the respondent examined himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the car belonging to 2nd appellant. On the other hand, it is the case of the appellants that the 1st appellant drove the Maruthi Car bearing Registration No.TN 02 F 5738 from North to South direction on the Vellode to Avalpoondurai road at a moderate speed by adhering the traffic rules. While he was nearing Jadarpalayam Pirivu, the respondent who was riding the motorcycle bearing Registration No.TN 38 D 7473 along with one



Kumar as pillion rider under the influence of alcohol in an inebricated mood, without wearing helmet in a rash and negligent manner, without following the road traffic rules and unmindful of the oncoming vehicle. On seeing the same, the 1st respondent slowed down the car and swerved to the left side of the road. But the respondent who was coming in an uncontrollable speed in the wrong direction, dashed against the car and invited the accident. On account of the accident, the left side of the car got damaged. To prove the said contention, the 1st appellant, driver of the car examined himself as R.W.1, examined one Gowrisankar as R.W.2 and marked the complaint given to the Police, Vellode Police Station as Ex.R1. Ex.R1 is only an xerox copy and even the signature of the 1st appellant is not found and also there is no relevant document to establish that Ex.R1 was filed before the Vellode Police Station. Further, the 1st appellant has not taken further steps for not registering the F.I.R. on the complaint given by him. The appellants have not disputed the F.I.R., which was registered against the 1st appellant by way of filing objections or private complaint before the Jurisdictional Magistrate. There is no document to show that the respondent was under the influence of alcohol at the time of accident. Further, the appellants have not proved by acceptable evidence that the rider and pillion rider were not wearing helmet at the time of accident. The Tribunal considering the fact that no valid rebuttal evidence was produced on the side of the appellants with respect to negligence on the part of the respondent, held that the evidence of P.W.1 remains unchallenged and came to the conclusion that the accident has occurred only due to negligence on the part of the driver of the car belonging to 2nd appellant. There is no error in the said finding of the Tribunal.

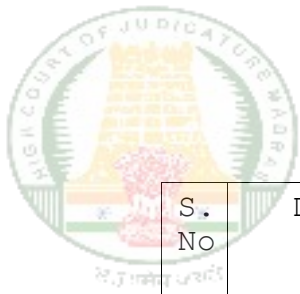
12.As far as the contention of the learned counsel appearing for the appellants that the injured has taken First Aid Treatment at Kavitha Hospital and purposefully not produced the any documents with regard to first aid treatment for not revealing the fact that he consumed alcohol at the time of alcohol is concerned, when the appellants resisted the claim that accident has occurred only due to the negligence on the part of the respondent and the rider as well as the pillion rider were in an inebricated condition at the time of accident, it is for the appellants to prove the same. In the present case, the appellants have not proved the said contention by acceptable evidence. In view of the same, there is no error in the award passed by the Tribunal.

13.As far as quantum of compensation is concerned, it is the claim of the respondent/claimant that in the accident, he sustained lacreation 4 X 1 cm over dorsum of left foot on II and IIIrd MC Bone, contusion, tenderness, deformiting over the left



leg L/4 swelling 10 X 6 cm, fracture of left leg both bone and multiple injuries all over the body. To prove the same, the respondent examined himself as P.W.1 and Dr.K.Periyasamy as P.W.2. P.W.2/Doctor examined the respondent and certified that the respondent suffered 32% disability and issued Ex.P13/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and Ex.P13/disability certificate, has awarded a sum of Rs.96,000/- for 32% disability at the rate of Rs.3,000/- per percentage of disability. P.W.2/Doctor who certified that the respondent suffered 32% disability is not the Doctor who treated the respondent. In view of the same, the percentage of disability suffered by the respondent is fixed at 22%. A sum of Rs.3,000/- per percentage of disability awarded by the Tribunal 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.88,000/- (Rs.4,000/- X 22% disability).

14.It is the further claim of the respondent/claimant in the claim petition that at the time of accident, he was aged 28 years, working as Electrician in Union Office, Poondurai Semur and was earning a sum of Rs.10,000/- per month. Except oral evidence, the respondent has not produced any documentary proof like salary slip or wage register to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the age and nature of work done by the respondent, fixed a sum of Rs.9,000/- per month as notional income of the respondent. The accident is of the year 2015 and the notional income fixed by the Tribunal is not excessive. The Tribunal has awarded a sum of Rs.45,000/- for loss of income for five months at the rate of Rs.9,000/- per month. The respondent has not produced any documents to show that he lost his income for five months. In view of the same, he is entitled to compensation towards loss of income only for three months. Thus, the compensation awarded by the Tribunal for loss of income is modified to Rs.27,000/- (Rs.9,000/- X 3 months). The respondent has not claimed any amount towards attendant charges and future medical expenses. Hence, he is not entitled to any amount towards attendant charges and future medical expenses. 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:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	96,000/-	88,000/-	Reduced
2.	Pain and sufferings	45,000/-	45,000/-	Confirmed
3.	Medical expenses	2,05,000/-	2,05,000/-	Confirmed
4.	Extra nourishment	7,000/-	7,000/-	Confirmed
5.	Transportation	10,000/-	10,000/-	Confirmed
6.	Loss of income	45,000/-	27,000/-	Reduced
7.	Damages to clothes	2,000/-	2,000/-	Confirmed
	Total	Rs.4,10,000/-	Rs.3,84,000/-	Reduced by Rs.26,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,10,000/- is hereby reduced to Rs.3,84,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.95 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. On such deposit, the respondent 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. The respondent is permitted to withdraw the amount lying in the credit of M.C.O.P.No.95 of 2017, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Erode.

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

+1 CC to M/s.P.Kannan Kumar, Advocate, Sr 44397.

+1 Cc to M/s.N.Manoharan, Advocate, Sr 44192.

C.M.A.No.1650 of 2020

SJ(CO)
LS(16/09/2021)