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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2214 of 2016

H.Fayas

...Appellant / Claimant

Vs

1.R.Tamil Selvi

2.The Reliance General Insurance Co. Ltd.,
No.628, II Floor, Balmer Lawrie House,
Anna Salai, Chennai.

...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 27.06.2014 made in MCOP.No.531 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For R-2 : Mrs.Bhuvana Sundari

For R-1 : No appearance

J U D G M E N T

(This Appeal has been taken up for hearing through
Video Conferencing)

This Civil Miscellaneous Appeal has been filed by the Appellant/Claimant seeking enhancement of compensation under the impugned award dated 27.06.2014 passed by the Motor Accident Claims Tribunal, Subordinate Judge, Poonamallee in MCOP No.531 of 2012.

2. Heard Mr.K.Varadha Kamaraj, learned counsel for the Appellant/Claimant and Mrs.Bhuvana Sundari, learned counsel for the Second respondent/Insurance Company. The first respondent has remained exparte both before the Tribunal as well as this Court.

3. The Appellant/claimant has preferred this Appeal unsatisfied with the quantum of compensation awarded by the



Tribunal and also aggrieved by the findings of the Tribunal that he is also equally responsible for the cause of the accident as he was in a drunken state when the accident happened.

4. The Tribunal, under the impugned award assessed the compensation payable to the Appellant/Claimant at Rs.3,59,951/-, as detailed hereunder :

Heads	Award Amount (Rs.)
Injury	90,000/-
Transportation	5,000/-
Attendant's expenses	1,000/-
Medical expenses	2,18,951/-
Loss of income	20,000/-
Pain & Sufferings	20,000/-
Extra nourishment	5,000/-
Total	3,59,951/-

5. The Appellant / Claimant sustained the following injuries as a result of an accident which happened on 07.05.2012 caused by a vehicle owned by the first respondent and insured with the Second Respondent/Insurance Company.

- (a) Bone fracture of right frontal bone
- (b) Head injury
- (c) Bone fracture of orbital bone
- (d) Injuries all over the body

6. The Tribunal, under the impugned award has also fixed contributory negligence against the Appellant/Claimant at 50% on account of the fact that the Appellant/Claimant was under the influence of alcohol when the accident happened.

7. Before the Tribunal, the Appellant/Claimant has filed nine documents which were marked as Exs.P1 to P9 and two witnesses were examined on his side namely the Appellant/Claimant himself as PW1 and the doctor who examined him as PW2. On the side of the second respondent, one document was filed namely the Accident Register copy dated 07.05.2012 which was marked as Ex.R1 and one witness was examined namely the Insurance company official as RW1. The second respondent/insurance company disputed the liability before the Tribunal on the ground that the Appellant/Claimant was under the influence of alcohol when the accident had happened. However, as seen from the impugned award, without the assistance of any scientific test report, as per the provisions of the Motor Vehicles Act, based on the Accident Register copy which was



marked as Ex.R1, the Tribunal has fixed the contributory negligence on the Appellant/Claimant at 50% on the ground that he was under the influence of alcohol at the time of accident. As per the provisions of Section 185 of the Motor Vehicles Act, there is a procedure to be adopted for the purpose of deciding as to whether any person was under the influence of alcohol or not, while driving the vehicle.

Section 185 of the Motor Vehicles Act reads as follows -

185. Driving by a drunken person or by a person under the influence of drugs - Whoever , while driving, or attempting to drive, a motor vehicle -

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six month, or with fine which may extend to two thousand rupees, or with both ; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation - For the purpose of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable or exercising proper control over a motor vehicle.

8. Admittedly, in the instant case, the above mentioned procedure has not been followed and test report contemplated therein has also not been filed before the Tribunal by the second respondent. The Tribunal, only based on the Accident Register copy which discloses that the Appellant/Claimant was under the influence of alcohol, has fixed his contributory negligence at 50% which in the considered view of this Court is not a correct assessment, as there is no scientific test report, as required under the provisions of Section 185 of Motor Vehicles Act, 1988. This Court is of the considered view that the assessment of contributory negligence against the Appellant/Claimant at 50% is very high. After giving due



consideration to the materials and evidence available on record as well as the Accident Register copy (Ex.R1) relied upon by the second respondent, this Court fixes the contributory negligence of the Appellant/Claimant at 25% instead of 50% fixed by the Tribunal.

9. With regard to the quantum of compensation awarded by the Tribunal towards disability at Rs.90,000/- is concerned, it has to be necessarily enhanced as the Tribunal has failed to take into consideration the year of the accident. The accident happened on 07.05.2012. The doctor has assessed the disability of the Appellant/Claimant at 45%. If the year of accident was given due consideration, the Tribunal ought to have granted disability compensation at Rs.3000/- per percentage of disability but instead, the Tribunal had erroneously awarded disability compensation at Rs.2000/- per percentage of disability. Hence, this Court enhances the disability compensation to Rs.1,35,000/-, calculated at Rs.3000/- per percentage of disability for the 45% disability instead of Rs.90,000/- awarded by the Tribunal, calculated at Rs.2000/- per percentage of disability for 45% disability.

10. The Tribunal has awarded a compensation of Rs.5,000/- towards transportation and Rs.1,000/- towards attendant's expenses which in the considered view of this Court is low. After giving due consideration to the nature of injuries and the year of the accident, this Court enhances the compensation towards transportation from Rs.5000/- to Rs.10,000/- and towards Attendant's expenses from Rs.1,000/- to Rs.5,000/-. Similarly, the Tribunal has awarded a compensation of Rs.20,000/- towards Pain & Sufferings and Rs.5,000/- towards extra nourishment which also needs to be enhanced. Accordingly, this Court enhances the compensation towards Pain & Sufferings from Rs.20,000/- to Rs.30,000/- and towards extra nourishment from Rs.5,000/- to Rs.10,000/-. The Tribunal has awarded a compensation of Rs.20,000/- towards loss of income, calculated at Rs.5,000/- per month for a period of four months.

11. At the time of accident, the Appellant/Claimant was working as a service technician in a private concern. The avocation of the Appellant/Claimant has also not been disputed by the second respondent before the Tribunal. This being the case, the Tribunal ought to have fixed the notional monthly income of the Appellant/Claimant at Rs.8,000/- instead of Rs.5,000/-. Accordingly, the notional monthly income of the Appellant/Claimant is fixed at Rs.8,000/- instead of Rs.5,000/- fixed by the Tribunal. Therefore, the loss of income to the Appellant/Claimant is enhanced to Rs.32,000/-, calculated at Rs.8,000/- per month for a period of four months instead of Rs.20,000/-, calculated at Rs.5,000/- per month for a period of



four months. The Tribunal has also erroneously failed to award any compensation towards damages to clothing and loss of amenities of life which the Appellant/Claimant is legally entitled to, in accordance with the settled law. Hence, this Court awards the compensation at Rs.1,000/- towards damages to clothing and Rs.15,000/- towards loss of amenities to the Appellant/Claimant. In so far as the compensation awarded by the Tribunal towards medical expenses at Rs.2,18,951/- is concerned, they are supported by bills which have been marked as Ex.P4 before the Tribunal and therefore the same is confirmed by this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.3,59,951/- to Rs.4,56,951/- by this Court, in the following manner. The contributory negligence against the appellant/claimant is also reduced to 25% instead of 50% fixed by the Tribunal.

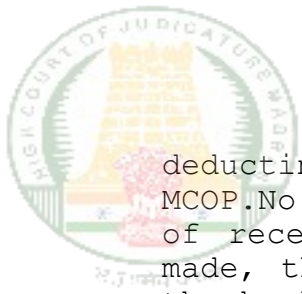
Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Injury	90,000/-	1,35,000/-
Transportation	5,000/-	10,000/-
Attendant's expenses	1,000/-	5,000/-
Medical expenses	2,18,951/-	2,18,951/-
Loss of income	20,000/-	32,000/-
Pain & Sufferings	20,000/-	30,000/-
Extra nourishment	5,000/-	10,000/-
Damages to clothing	-	1,000/-
Loss of amenities	-	15,000/-
Total	3,59,951/-	4,56,951/-

Less : contributory negligence @ 25%
against the appellant/claimant ... 1,14,238/-

75% of the award amount payable
by the 2nd respondent/Insurance company ... 3,42,713/-

Conclusion:

13. In the result, this appeal shall stand partly allowed. The Second Respondent / Insurance Company is directed to deposit 75% of the amount awarded by this Court i.e. Rs.3,42,713/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, after



deducting the amount already deposited to the credit of MCOP.No.531 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellant/claimant through RTGS within a period of one week thereafter. The requisite Court fee, if any has to be paid by the Appellant/Claimant before receiving the copy of this Judgment. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rgr

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Poonamallee.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.31768

C.M.A.No.2214 of 2016

RSV(CO)
RVM(19/11/2021)