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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.07.2021	Delivered on: 30.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.966 of 2020

G.Karthik

.. Appellant/Petitioner

Vs.

1.The Superintending Engineer,
Electricity Distribution Circle,
Namakkal District.

2.M/s.United India Insurance Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.09.2019 made in M.C.O.P.No.866 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

For Appellant : Mr.A.Sathishkumar

For R2 : Ms.R.Janani

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 23.09.2019 made in M.C.O.P.No.866 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

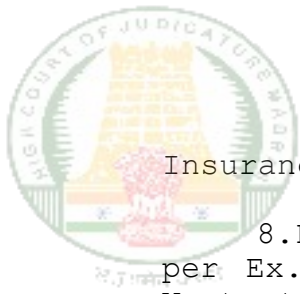
2.The appellant is the claimant in M.C.O.P.No.866 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal. He filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation



3.The Tribunal considering the pleadings, oral and documentary evidence, held both the driver of the jeep belonging to 1st respondent as well as the appellant are responsible for the accident, fixed 50% negligence on both the appellant as well as on the driver of the jeep, awarded a sum of Rs.1,61,000/- and directed the 2nd respondent-Insurance Company to pay a sum of Rs.80,500/- being 50% of the award amount as compensation to the appellant.

5. The learned counsel appearing for the appellant contended that the appellant was riding the motorcycle on the extreme end of the road with slow speed and there is no negligence on the part of the appellant and the Tribunal has erroneously fixed 50% contributory negligence on the part of the appellant. In the accident, the appellant sustained closed distal fourth fracture both bone left leg, laceration angle of mouth right side and also sustained fracture of both bones on the left leg and has taken treatment in the Ganga Hospital, Coimbatore from 01.10.2014 to 06.10.2014. The amounts awarded by the Tribunal towards pain and sufferings, medical bills, transportation and extra nourishment are meagre. In support of his contention, he relied on the Division Bench judgment of this Court reported in 2018 (2) TNMAC 168, (National Insurance Company Limited Vs. Thangadurai and another) and prayed for setting aside the portion of the award fixing 50% contributory negligence on the part of the appellant and for enhancement of compensation.

7. 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.

8. From the award passed by the Tribunal, it is seen that as per Ex.P1/F.I.R., the appellant was riding the motorcycle from West to East direction and the 1st respondent's jeep was proceeding from North to South. Further, it is evident from Exs.R2 & R3/Motor Vehicle Inspector's Report, the front left side bumper of both the vehicle's got damaged. R.W.1/Special Sub Inspector of Police, Namakkal Police Station, the Investigating Officer after investigation came to a conclusion that the negligent act of the appellant is the cause for the accident and referred the case as mistake of fact and Ex.R1 is the negative final report. The Tribunal considering the evidence of P.W.1, R.W.1, R.W.2 and contents of Exs.P1, R1 to R3, held that the accident has occurred due to negligence of both the vehicles. Further, at the time of accident the appellant was not possessing valid driving license at the time of accident and the driving license was issued to the appellant only on 16.08.2016 subsequent to the accident. Non possession of driving license is not the only ground to fix contributory negligence on the part of the appellant and the Tribunal has to consider the facts and circumstances of the case. In the present case, the Tribunal considered Exs.R2 & R3, Motor Vehicle Inspector's Report for both the vehicles and held that front left side bumper of both the vehicles got damaged and came to the conclusion that both the appellant as well as the driver of the jeep belonging to 1st respondent are equally responsible for the accident and fixed 50% negligence on both of them. There is no error in the said finding of the Tribunal.

9. As far as quantum of compensation is concerned, it is the claim of the appellant in the claim petition that in the accident he suffered closed distal fourth fracture both bone left leg, laceration angle of mouth right side and also sustained fracture of both bones on the left leg and has taken treatment in the Ganga Hospital, Coimbatore from 01.10.2014 to 06.10.2014. To prove the same, the appellant examined himself as P.W.1 and marked the Wound Certificate as Ex.P2, Discharge Summary as Ex.P3 and Ex.P4/Medical Bill series. The Tribunal considering the nature of injuries and period of treatment taken by the appellant, has awarded a sum of Rs.50,000/- towards pain and sufferings based on Exs.P2 to P4. At the time of accident, the appellant was aged 19 years, was a College Student studying B.E.-CS at Karpagam College of Engineering, Coimbatore. Considering the nature of injuries and age of the appellant, he would have suffered more pain. Hence, the meagre amount of Rs.50,000/- awarded by the Tribunal for pain and sufferings is hereby enhanced to Rs.75,000/-. The appellant has produced Ex.P4/Medical Bills for a sum of Rs.1,15,634.63 and the Tribunal considering the same, has awarded only a sum of Rs.1,00,000/- for medical



expenses on the ground that he got reimbursement of the said amount. The said reasoning of the Tribunal is not correct and hence, the appellant is entitled to a sum of Rs.1,15,634.63 (rounded off to Rs.1,15,635/-) as per Ex.P4/Medical Bills. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant, he is entitled to a sum of Rs.5,000/- for attendant charges. Due to injuries sustained by the appellant, he would have suffered inconvenience and would be facing discomfort in his life. Therefore, the appellant is entitled to a sum of Rs.25,000/- towards loss of amenities. The amounts awarded by the Tribunal for transportation and extra nourishment 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.	Pain and sufferings	50,000/-	75,000/-	Enhanced
2.	Extra nourishment	6,000/-	6,000/-	Confirmed
3.	Medical expenses	1,00,000/-	1,15,635/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Attendant charges	-	5,000/-	Granted
6.	Loss of amenities	-	25,000/-	Granted
	Total	Rs.1,61,000/-	Rs.2,31,635/-	Enhanced by Rs.35,350/-
	50% of award amount	Rs.80,500/-	Rs.1,15,817.50 Rounded off to Rs.1,15,850/-	(Rs.1,15,850/- - Rs.80,500/-)

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.80,500/- is hereby enhanced to Rs.1,15,850/- 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 the award amount 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.866 of 2016 on the file of the Motor Accident Claims



Tribunal, Chief Judicial Magistrate's Court, Namakkal. 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. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 10.02.2020 made in C.M.P.No.2422 of 2020 in C.M.A.SR.No.13493 of 2020. No costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.37000

+2cc to Mr.C.Thangaraju, Advocate, S.R.No.37587

C.M.A.No.966 of 2020

MK-II (CO)
CB(21/09/2021)