



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.82 of 2013

Sabarinathan

... Appellant/Petitioner

..Vs..

1.Devadoss
S/o. Manickam

2. State Planning Commission
Rep.by its Member Secretary,
District Planning Cell,
Nagapattinam Town.

3.Union of India
rep.by Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.

...Respondents/Respondents

(R3 remained absent and set exparte
by the tribunal, hence no notice to
R3 is necessary)

Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the Judgment and decree dated 27.03.2012 made in
M.C.O.P.No.75 of 2011 on the file of the Motor Accidents Claims
Tribunal, District Judge, Kariakal.

For Appellant : Mr.R.Vasudevan

For Respondents 1,2 : No appearance

For Respondent 3 : Exparte



JUDGMENT

Dissatisfied with the judgment and decree, dated 27.03.2012 in MCOP.No. 75 of 2011 passed by the tribunal awarding compensation of Rs.1,80,675/- along with interest at the rate of 7.5% per annum and the contributory negligence fixed on the claimant at 25%, the claimant is before this Court for enhancement of compensation.

2. It is the case of the appellant herein that on 07.07.2010 at about 10.00 am the claimant was proceeding in his TVS 50 XL at melakasakudy main road towards west to east and when he was proceeding to Kalayankatti bridge, the respondent came in a Mahindra Jeep bearing Reg.No.TN51-G-0228 in a rash and negligent manner and dashed against the petitioner. As a result, the petitioner sustained fracture and grievous injuries. The claimant has filed a claim petition claiming compensation of Rs.5,00,000/- for the injuries sustained by the him in the said accident. The tribunal based on the evidence and documents, has concluded that the accident had occurred due to negligence on the part of the claimant and the respondents 1 to 3, hence fixed negligence 25% on the part of the claimant and 75 % on the part of the respondents 1 to 3. The tribunal has granted compensation to the claimant for a sum of Rs.1,80,675/- (75% of total compensation of Rs.2,40,900) along with interest at the rate of 7.5% per annum. Challenging the said quantum of compensation and the contributory negligence, the claimant has preferred the present appeal.

3. On the side of the claimants, two witnesses P.W.1 & P.W.2 were examined and eleven documents Ex.P1 to P11 were marked. On the side of the respondent one witness RW1 was examined and no and documents were marked.

4. The learned counsel for the appellant submitted that the tribunal ought not have fixed 25% of contributory negligence on the part of the appellant on the ground that the appellant was not holding valid driving licence. The learned counsel for the appellant further submitted that the tribunal without considering disability assessed at 55% by PW2, has awarded only a sum of Rs.45,000/- towards partial disability. It is further submitted by the learned counsel for the appellant that the appellant took treatment at MIOT Hospital, Chennai for 10 days as inpatient for two fractures sustained in his left leg, therefore a sum of Rs.10,000/- ought to have been awarded towards attender charges. In total the compensation awarded by the tribunal is very less and needs to be enhanced.

5. Heard the learned counsel appearing for the appellant and perused the materials available on record. Though notice served



on the respondents 1 & 2 , none appeared on their behalf.

The Points for consideration in this appeal are;

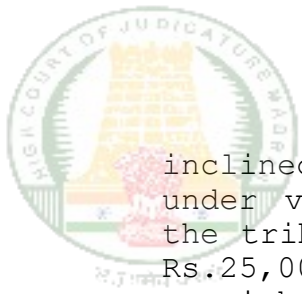
i. whether the contributory negligence fixed on the appellant and the respondents is correct or not?

ii. Whether the compensation awarded by the tribunal requires any modification?

6. A perusal of Ex.P1/FIR reveals that the appellant while proceeding on the Melakasakudy main in his TVS 50 Super XL motorcycle bearing Reg.No. TN39-AD-5079, the jeep driven by the 1st respondent came in the opposite direction in a rash and negligent manner and dashed against the claimant/appellant herein causing injury on his left leg. It is seen from the records that though the 1st respondent who was examined RW1 has deposed that the FIR itself is false, he has not taken any steps to question the same. Further, PW1/claimant during his cross examination has admitted that he was not having valid driving licence to ride the motorcycle at the time of the accident. From the above, it is clear that the accident occurred only due to the rash and negligence on the part of the 1st respondent driver. The tribunal by considering the fact that the claimant/appellant herein was not holding driving licence, has fixed contributory negligence at 25% on the part of the claimant/appellant herein and directed the respondents to pay the remaining 75% of the compensation amount. This Court finds no error in fixing contributory negligence on the part of the claimant and the respondents and the same is confirmed. The Point 1 is answered accordingly.

7. The learned counsel for the appellant has brought to the notice of this Court the copy of the judgment delivered by this Court on the appeal preferred by the respondents herein in CMA.No.2469 of 2012 against judgment and decree passed by the tribunal in MCOP.No. 75 of 2011 dated 27.03.2012, which is under challenge in the present appeal. The said appeal preferred by the respondents was dismissed by this Court confirming the award passed by the tribunal.

8. As far as quantum of compensation is concerned, PW2/ Doctor has assessed the disability at 55% and marked Ex.P10/disability certificate. But the tribunal has reduced the disability at 45% and awarded Rs.45,000/- without any basis. Therefore, this Court is of the view that the entire percentage of disability assessed by the doctor at 55% has to be taken for awarding compensation. Accordingly, by fixing Rs.1500/- per percentage, the compensation for permanent ad partial disability is calculated to Rs.82,500/- (1500 x 55). In view of the injuries and disability sustained by the claimant, this Court is



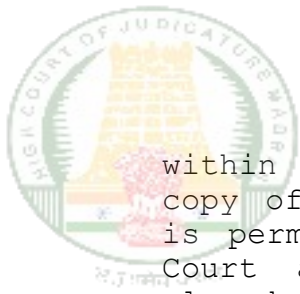
inclined to modify the compensation awarded by the tribunal under various heads. Accordingly, the compensation awarded by the tribunal under the head 'Pain and Suffering' is reduced from Rs.25,000/- to Rs.20,000/- . The compensation awarded for extra nourishment and medical expenses are confirmed. The tribunal has awarded a sum of Rs.4500/- towards loss of income for three months at the rate of Rs.1500/- per month. The same is modified to Rs.10,000/- at the rate Rs.5000/- for three months. The compensation awarded by the tribunal towards 'Transportation charges' at Rs.9600/- is rounded off to Rs.10,000/-. The tribunal has not awarded any amount towards Loss of Amenities, hence a sum of Rs.10,000/- is granted under the said head. The Point No.2 is answered accordingly.

The compensation awarded by the tribunal is modified as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Permanent and Partial disability	45,000	82,500/- (1500 x 55)
Pain and Suffering	25,000	20,000
Extra Nourishment	5,000	5,000
Loss of income	4,500	10,000 (5000 x 2)
Loss of Amenities	...	10,000
Medical Expenses	1,51,800	1,51,800
Transport charges	9,600	10,000
Total	2,40,900/-	2,89,300/- (75% = 2,16,975 25% = 72,325)

9. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.2,40,900/- awarded by the tribunal is enhanced to Rs. 2,89,300/-. From the said enhanced compensation amount of Rs.2,89,300/-, the claimant is entitled to only 75% of the compensation i.e a sum of Rs.2,16,975/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

10. The respondents 1&2 are directed to deposit a sum of Rs.2,16,975/- as modified by this Court along with interest,



within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation as modified by this Court along interest, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ak

To

1. The Motor Accidents Claims Tribunal
District Judge,
Kariakal.

Copy to

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

+1cc to Mr.T.Susindran, Advocate, S.R.No.15300

CMA.No.82 of 2013

RK(CO)
CB(04/10/2021)