



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.908 OF 2021

M.Murugesan

.. Appellant/
Petitioner

Vs.

1. S.Balakumar

2. United India Insurance Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road, Namakkal-637 001.

3. United India Insurance Company Limited,
Muthaiha Complex,
No.1170, Mettur Road,
Erode District - 638 011.

.. Respondents 1 to 3/
Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.12.2020 made in M.C.O.P. No.179 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.

For Appellant : Mr.K.Premnath
for Mr.SP.Yuaraj

For Respondents : M/s.I.Malar (For R2)



JUDGMENT

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

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This appeal has been filed to set aside the award of the Tribunal dated 02.12.2020 made in M.C.O.P. No.179 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode.

2.By consent of the learned counsel appearing for the appellant as well as the 3rd respondent, the appeal is taken up for final disposal at the admission stage itself.

3.The appellant-claimant, filed M.C.O.P. No.179 of 2018, on the file of the Special District Court, (Motor Accidents Claims Tribunal), Erode, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.06.2017.

4.According to the appellant, on the date of accident, when he was riding a Motorcycle bearing Registration No.TN-28-AW-1522 on Perukkampalayam to Sekkupatti road, Settimedu Sri Nagar flat, near Chinna Thambi Garden, the 1st respondent, driver-cum-owner of the Car bearing Registration No.TN-28-AU-4477 drove the same in a rash and negligent manner without control and dashed on the Motorcycle driven by the deceased and caused the accident. In the accident, the appellant suffered grievous injuries. The accident occurred only due to rash and negligent driving by 1st respondent. Hence, the appellant filed the said claim petition, claiming compensation against the 1st respondent as owner-cum-driver and respondents 2 and 3 as insurer of the Car.

5.The 1st respondent, owner-cum-driver of the Car, remained exparte before the Tribunal.

6.The 3rd respondent, insurer of the Car, filed counter statement, denying all the averments made by the appellant in the claim petition. The same was adopted by the 2nd respondent-Insurance Company. According to the 3rd respondent, the accident has occurred only due to rash and negligent riding of Motorcycle



contended that in the accident the appellant sustained severe injuries in left temporal haemorrhagic contusion, subtle focal areas of SAH in the left temporal lobe, right maxillary sinus undisplaced fracture and several injuries all over the body and has taken treatment as in-patient for 8 days in C.M. Hospital, Namakkal. P.W.2 Doctor examined the appellant and certified that the appellant suffered 20% disability. The Tribunal awarded only meagre amount as compensation. The total compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation and for setting aside the 15% contributory negligence fixed on the appellant.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred when the appellant drove the Motorcycle in the zig-zag manner, at uncontrollable speed, without minding the speed breakers and dashed on the Car. The accident occurred only due to negligent riding by the appellant, who rode the vehicle without wearing helmet and without possessing valid driving license. The Tribunal considering the same, fixed 15% negligence on the part of the appellant, which is in order. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

13.From the materials on record, it is seen that in the cross examination, the appellant has admitted that he did not possess valid driving license and did not wear helmet at the time of accident. The Tribunal, on perusal of the evidences on record, held that the accident occurred only due to rash and negligent driving by 1st respondent, driver-cum-owner of the Car and fixed 15% contributory negligence on the appellant for not wearing helmet and not possessing driving license at the time of accident. There is no error in the said finding of the Tribunal warranting interference by this Court. The appellant is entitled to only 85% of the compensation awarded by the Tribunal.

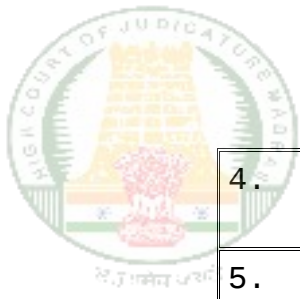
14.It is the case of the appellant that in the accident, he suffered grievous injuries and has taken treatment as in-



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patient at C.M. Hospital, Namakkal from 14.06.2017 to 20.06.2017, for a period of 7 days. P.W.2 Doctor examined the appellant and certified that the appellant suffered 20% disability. Considering the nature of injuries sustained, disability suffered and period of treatment taken, the amounts awarded by the Tribunal towards attendant charges, transportation and extra nourishment are meagre and hence the same are enhanced to Rs.10,000/- each. At the time of accident, the appellant was working as a Coolie and was earning a sum of Rs.18,000/- per month. He did not file any document to prove the said contention. In the absence of any evidence, the Tribunal fixed the sum of Rs.10,000/- per month as notional income. The accident is of the year 2017. The notional income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the appellant, the notional income fixed by the Tribunal is enhanced to Rs.14,000/- per month. The Tribunal has awarded a sum of Rs.20,000/- towards loss of income for two months. Due to the injuries suffered in the accident, the appellant would not have worked atleast for a period of three months. Hence, the amount awarded by the Tribunal towards loss of income is enhanced to Rs.42,000/- [Rs.14,000/- x 3 months], at the rate of Rs.14,000/- per month for three months. Considering the nature of injuries and disability, this Court is of the considered view that 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:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	30,000/-	30,000/-	Confirmed
2.	Medical expenses	45,732/-	45,732/-	Confirmed
3.	Attendant charges	2,500/-	10,000/-	Enhanced



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4.	Transportation charges	2,500/-	10,000/-	Enhanced
5.	Extra nourishment	2,500/-	10,000/-	Enhanced
6.	Disability	1,00,000/-	1,00,000/-	Confirmed
7.	Loss of income	20,000/-	42,000/-	Enhanced
	Total	2,03,232/-	2,47,732/-	Enhanced by Rs.37,825 /-
	85% of the award amount	1,72,747/-	2,10,572/-	(Rs.2,10,572 - Rs.1,72,747)

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,03,232/- is enhanced to Rs.2,47,732/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the sum of Rs.2,10,572/-, being 85% of the award amount, now determined by this Court, along with interest and costs, 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.179 of 2018. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

gsa



To

1. The Special District Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.18950

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.19109

C.M.A.No.908 of 2021

GSM(CO)
RLP(08/10/2021)