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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1547 of 2020
& 7 of 2021
and
C.M.P.No.11470 of 2020

C.M.A.No.1547 of 2020:

New India Assurance Company Limited,
Motor Third Party Claims Hub,
Bombay Mutual Building, 6th Floor,
No.232, N.S.C. Bose Road,
Chennai - 600 001.

.. Appellant/2nd Respondent

Vs.

1.M.Vinoth

... 1st Respondent/1st Respondent

2.Raja

..2nd Respondent/Petitioner

C.M.A.No.7 of 2021:

Raja

.. Appellant/Petitioner

Vs.

1.M.Vinoth

... 1st Respondent/1st Respondent

(R1 remained exparte before Tribunal.
Hence, his presence dispensed with)

2.The New India Assurance Company Limited,
Motor Third Party Claims,
No.232, Bombay Mutual Building,
6th Floor, N.S.C.Bose Road,
Chennai - 600 001.

..2nd Respondent/2nd Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 12.02.2019 made in M.C.O.P.No.2146 of



2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

In C.M.A.No.1547 of 2020:

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For Appellant : Ms.S.R.Sumathy
For R2 : Mr.A.G.F.Terry Chella Raja
for Ms.M.Malar
R1 : NA

In C.M.A.No.7 of 2021:

For Appellant : Mr.A.G.F.Terry Chella Raja
for Ms.M.Malar
For R2 : Ms.S.R.Sumathy
R1 : NA

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

2.These Civil Miscellaneous Appeals have been filed against the award dated 12.02.2019 made in M.C.O.P.No.2146 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.

3.Both these Civil Miscellaneous Appeals are arising out of the same accident and same award. Hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition, for the sake of convenience.

4.The claimant filed the said claim petition claiming a sum of Rs.35,00,000/- as compensation for the injuries sustained by him in the accident that took place on 23.02.2017.

5.According to claimant, on 23.02.2017 at about 10.45 P.M., while he was riding as a pillion rider in the motorcycle bearing Registration No.TN 10 AU 4403 rode by the 1st respondent on Dr.Ambedkar Salai, Ashok Nagar opposite to Saithanya Apartments from South to North direction, the 1st respondent rode the motorcycle in a very rash and negligent manner endangering public safety, lost his control over the motorcycle and dashed against another motorcycle which was coming from North to South direction. Due to the said impact, the claimant was thrown out



from the motorcycle and sustained multiple grievous injuries all over the body. Therefore, he filed the above said claim petition claiming compensation against the respondents 1 and 2, being the owner and insurer of the motorcycle bearing Registration No.TN 10 AU 4403 respectively.

6.The 1st respondent-owner of the motorcycle bearing Registration No.TN 10 AU 4403 remained exparte before Tribunal.

7.The 2nd respondent-Insurance Company, being the insurer of the motorcycle bearing Registration No.TN 10 AU 4403 filed counter statement and denied all the averments made by the claimant. According to 2nd respondent, the claimant has to prove that he was travelling as a pillion rider at the time of the accident in the motorcycle bearing Registration No.TN 10 AU 4403. The 2nd respondent denied the fact that the rider of the motorcycle bearing Registration No.TN 10 AU 4403 was having valid driving license at the time of accident. The claimant failed to implead of the owner and insurer of the motorcycle bearing Registration No.TN 03 C 4298 involved in the accident. The accident has occurred only due to negligence on the part of the rider of the motorcycle bearing Registration No.TN 03 C 4298 and the accident has not occurred due to negligence on the part of the rider of the motorcycle bearing Registration No.TN 10 AU 4403. Therefore, the 2nd respondent is not liable to pay any compensation to the claimant. The claimant has to prove that the 1st respondent's motorcycle bearing Registration No.TN 10 AU 4403 was insured with the 2nd respondent at the time of accident. The 2nd respondent denied the age, avocation, income, nature of injuries, medical expenses, period of treatment taken and disability suffered by the claimant. The injuries sustained by the claimant is only simple in nature. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.K.J.Mathiazhagan was examined as P.W.2 and 17 documents were marked as Exs.P1 to P17. The appellant-Insurance Company did not let in any oral and documentary evidence.

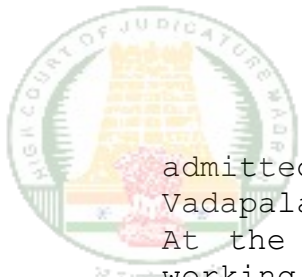
9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 10 AU 4403 belonging to 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.1,21,200/- as compensation to the claimant.



10. Against the said award dated 12.02.2019 made in M.C.O.P.No.2146 of 2017, the 2nd respondent-Insurance Company has come out with an appeal in C.M.A.No.1547 of 2020 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.7 of 2021 seeking enhancement of compensation.

11. The learned counsel appearing for the 2nd respondent-Insurance Company contended that accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 03 C 4298. F.I.R. was registered based on the complaint given by the 1st respondent against the rider of the motorcycle bearing Registration No.TN 03 C 4298. Charge sheet was filed only against the rider of the motorcycle bearing Registration No.TN 03 C 4298. The claimant and 1st respondent are friends. They colluded together and filed claim petition against the 2nd respondent to get compensation from the 2nd respondent-Insurance Company. The claimant as P.W.1 has deposed that 1st respondent is responsible for the accident contrary to the contents of F.I.R. The claimant has not impleaded the owner and insurer of the motorcycle bearing Registration No.TN 03 C 4298. The Tribunal erroneously relied on the evidence of P.W.1 and failed to consider the counter statement and additional counter statement filed by the 2nd respondent-Insurance Company. The claimant was hospitalized only for two days. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and for dismissal of C.M.A.No.7 of 2021, filed by the claimant.

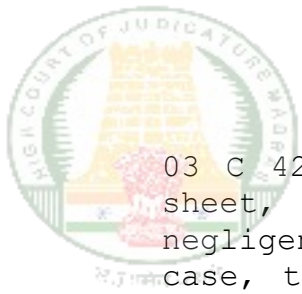
12. Per contra, the learned counsel appearing for the claimant contended that accident has occurred only due to the negligence on the part of the 1st respondent-rider of the motorcycle bearing Registration No.TN 10 AU 4403. The claimant examined himself as P.W.1 and proved the same. The 2nd respondent did not let in any evidence to disprove the evidence of claimant as P.W.1. The Tribunal considering the evidence of P.W.1 by giving valid reason, rightly held that accident has occurred only due to negligence on the part of the 1st respondent-rider of the motorcycle bearing Registration No.TN 10 AU 4403. In the accident, the claimant sustained fracture of nasal bone both side, deep injury in left hand, fracture in right hand, injury over abdomen, injury over both shoulder and chest, deep injury in back bone, head injury - concussion brain, hematoma left pampiniform plexus, facial and head injuries and multiple grievous injuries all over the body. He has taken first aid treatment at Sri Ramachandran Hospital, Porur, Chennai and then



admitted at Vijaya Institute of Trauma & Orthopaedics, Vadapalani, Chennai as inpatient from 24.02.2017 to 25.02.2017. At the time of accident, the claimant was aged 23 years, was working as an Administrative Officer (Diploma in Robotics) in Sai Enterprises Office, Chennai and was earning a sum of Rs.25,000/- per month. But the Tribunal erroneously fixed a meagre sum of Rs.10,000/- per month as notional income of the claimant. P.W.2/Doctor examined the appellant and certified that appellant suffered 15% disability and issued Ex.P16/disability certificate to that effect. But the Tribunal without giving any valid reason, reduced the percentage of disability to 10% and awarded compensation only for 10% of disability at the rate of Rs.3,000/- per percentage of disability. P.W.2/Doctor deposed that he found "Mal United Fractures, pain and stiffness around nasal area, repeated attacks of head ache and giddiness repeated attacks of sinisitis not able to breathe properly and difficulty to do his work. The Tribunal has not considered the evidence of P.W.2/Doctor and the loss of earning capacity of the appellant, failed to adopt multiplier method and failed to grant compensation towards loss of earning capacity. The amounts awarded by the Tribunal towards disability, pain and sufferings, loss of income, transportation, extra nourishment, damages to clothes, medical expenses, attendant charges, loss of amenities and loss of marital prospects and disfigurement are meagre and prayed for enhancement of compensation as well as for dismissal of C.M.A.No.1547 of 2020 filed by the 2nd respondent-Insurance Company.

13.Heard the learned counsel appearing for the 2nd respondent-Insurance Company as well as the learned counsel appearing for the claimant and perused the entire materials on record.

14.It is the case of the claimant that while he was riding as pillion rider in the motorcycle bearing Registration No.TN 10 AU 4403 rode by the 1st respondent, due to rash and negligent riding by the 1st respondent, accident occurred and he sustained injuries. To prove his case, he examined himself as P.W.1 and marked documents. On the other hand, it is the case of the 2nd respondent-Insurance Company that accident has occurred only due to rash and negligent riding by the rider of the motorcycle bearing Registration No.TN 03 C 4298 and the 1st respondent is not responsible for the accident. The claimant and 1st respondent are friends. The claimant in collusion with the 1st respondent, filed claim petition to claim compensation from the 2nd respondent. The 1st respondent himself lodged a complaint against the rider of the motorcycle bearing Registration No.TN



03 C 4298. The Tribunal without considering the F.I.R., charge sheet, erroneously accepted the evidence of claimant and fixed negligence on the part of the 1st respondent. To prove their case, the 2nd respondent did not examine any eyewitness. The 1st respondent remained exparte before the Tribunal. In the absence of any contra evidence to the evidence of claimant, the Tribunal fixed negligence on the part of the 1st respondent on the ground that evidence of P.W.1 being primary evidence would prevail over the F.I.R. and charge sheet, fixed negligence on the part of the 1st respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, it is the case of the claimant that he sustained fracture of nasal bone both side, deep injury in left hand, fracture in right hand, injury over abdomen, injury over both shoulder and chest, deep injury in back bone, head injury - concussion brain, hematoma left pampiniform plexus, facial and head injuries and multiple grievous injuries all over the body. The claimant was referred to P.W.2/Doctor for assessing the percentage of disability. P.W.2/Doctor examined the claimant and certified that claimant suffered 15% disability and issued Ex.Pl6/disability certificate to that effect. The Tribunal reduced the percentage of disability to 10% on the ground that P.W.2/Doctor has not produced any working sheet for assessment of disability. The reason given by the Tribunal for reducing 15% of disability to 10% is not correct. The 2nd respondent-Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.Pl6/disability certificate issued by P.W.2/Doctor, who is a registered Medical Practitioner. In view of the same, the percentage of disability assessed by P.W.2/Doctor is accepted and disability is fixed at 15%. The Tribunal has awarded a sum of Rs.3,000/- per percentage of disability and the same 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 2017. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.75,000/- (Rs.5,000/- X 15% of disability). Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal under other heads are not meagre 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.	Disability	30,000/-	75,000/-	Enhanced
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Loss of income	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	20,000/-	20,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Medical expenses	11,200/-	11,200/-	Confirmed
7.	Attendant charges	10,000/-	10,000/-	Confirmed
8.	Loss of amenities	10,000/-	10,000/-	Confirmed
9.	Loss of marital prospects and disfigurement	10,000/-	10,000/-	Confirmed
10.	Damages to clothes	5,000/-	5,000/-	Confirmed
	Total	Rs.1,21,200/-	Rs.1,66,200/-	Enhanced by Rs.45,000/-

16.The compensation awarded by the Tribunal at Rs.1,21,200/- is hereby enhanced to Rs.1,66,200/- 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 if any already deposited, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.2146 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai. On such deposit, the claimant 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 claimant is directed to pay the necessary Court fee as per the order of this



Court dated 21.12.2020 made in C.M.P.No.13288 of 2020 in C.M.A.No.SR.78335 of 2020.

17.In the result, C.M.A.No.1547 of 2020 filed by the 2nd respondent-Insurance Company is dismissed and C.M.A.No.7 of 2021 filed by the claimant is partly allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Special Subordinate Judge No.2,
Small Causes Court,
Chennai.

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

+1cc to Mr.M.Malar, Advocate SR.No.5331

C.M.A.Nos.1547 of 2020
& 7 of 2021

PP(CO)
GN(06/12/2021)