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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1070 of 2020

Mani

...Appellant

Vs.

1.Lawrance

2.The National Insurance Co. Ltd.,

DO X, Hero Honda Vertical, 101 - 106,

BMC House, New Delhi.

Branch at 2nd Floor, 81-D, Chetty Street,

Opp: Bus Stand, Tiruchengode,

Namakkal District.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP.No.132 of 2016 dated 12.12.2019 on the file of the Motor Accident Claims Tribunal / Sub-ordinate Judge Court, Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mrs.N.B.Surekha,

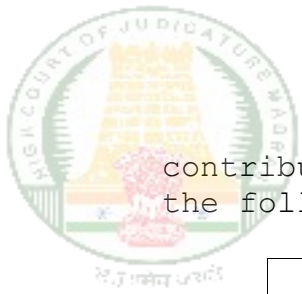
M/s.M.B.Chaittanya for R2

J U D G M E N T

The claimant, who had suffered injuries in a motor accident that occurred on 25.03.2016 and was favoured with an award for compensation of Rs.71,600/-, seeks enhancement.

2.It is stated that the claimant suffered grievous injuries in the foot and was disabled for quite some time. He was also an inpatient for nearly three days. The claimant assessed the compensation at Rs.15,00,000/-. It is seen that the owner of the offending vehicle remained exparte.

3.The claim was resisted by the Insurance Company contending that the claimant had contributed to the accident and the quantum of compensation claimed is on the higher side. The Medical Board assessed the disability at 5%. The Tribunal, on a consideration of the evidence on record concluded that the claimant would have contributed to the accident and fixed his



contribution at 25%. The Tribunal granted compensation under the following heads:-

Heads	Amount in Rs.
Permanent Disability	Rs.15,000/-
Pain and suffering	Rs.15,000/-
Extra Nourishment and Loss of Articles	Rs.5,000/-
Attendant Charges	Rs.4,000/-
Medical Expenses (Based on Bills)	Rs.39,450/-
Transportation Charges	Rs.5,000/-
Loss of Income (for a period of 2 months)	Rs.12,000/-
Total	Rs.95,450/-

Since the Tribunal has found that the claimant had contributed to the accident and his contribution was fixed at 25%, the Tribunal deducted Rs.23,850/- and arrived at a total figure of Rs.71,587/- and the same was rounded off to Rs.71,600/-.

4.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the appellant and Mrs.N.B.Sureskha, learned counsel appearing for the 2nd respondent / Insurance Company.

5.Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant would vehemently contend that the Tribunal erred in holding that the claimant has contributed to the accident in the absence of any evidence on the side of the Insurance Company. He would point out that the FIR was filed against the driver of the offending vehicle namely, another two wheeler bearing registration No.TN-29-AT-7966 insured with the 1st respondent Insurance Company and contend that the Tribunal was not right in concluding that the claimant would have contributed to the accident. He would also point out that the amount of award towards permanent disability was at Rs.3,000/- per percentage whereas, it should have been granted at Rs.4,000/- as per the judgment of this Court in M.Chinnathambi Vs. S.Deepa and another reported in 2020 (1) TN MAC 617.

6.Contending contra, Mrs.N.B.Surekha, learned counsel appearing for the Insurance Company would submit that the Tribunal has taken into account the manner, in which, the



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accident has occurred and has concluded that the claimant has contributed to the accident. She would also point out that the Tribunal has awarded reasonable amounts under various heads and therefore, there is no scope for enhancement of award amount. I have considered the rival submissions.

7.The First Information Report was lodged against the driver of the two wheeler bearing Registration No.TN-29-AT-7966. He was also prosecuted and punished. The Insurance Company had not taken any steps to let in evidence to show that the claimant had contributed to the accident. A perusal of the award of the Tribunal would show that the Tribunal has concluded that the claimant has contributed to the accident. In the absence of any evidence on the question of contributory negligence, the Tribunal cannot term the claimant, who had also driven a two wheeler was negligent and fixed the contribution at 25%. I therefore, have no hesitation in setting aside the said finding of the Tribunal that the claimant would have contributed to the accident. Therefore, the deduction of 25% from the award amount is also set aside. As regards the compensation for permanent disability, as rightly pointed out by the learned counsel for the Appellant, this Court had awarded Rs.4,000/- per percentage on disability in M.Chinnathambi Vs. S.Deepa and another reported in 2020 (1) TN MAC 617.

8.In view of the same, award under the head of permanent disability is enhanced to Rs.20,000/- from Rs.15,000/- and the deduction of Rs.23,850/- made towards contributory negligence is also set aside. In all other aspects, the award of the Tribunal is confirmed. Thus, the claimant would be entitled to a sum of Rs.1,00,450/- as compensation and the same is rounded off to Rs.1,00,000/-. The Tribunal has given liberty to the Insurance Company to recover the compensation from the 1st respondent. The same is sustained. The Insurance Company would be entitled to recover the enhanced compensation also from the 1st respondent.

8.In fine, this appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:-

- 1.The Motor Accident Claims Tribunal,
Sub-ordinate Court, Tiruchengode.

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

+1cc to Mr.N.B.Surekha, Advocate SR.No.61425

CMA.No.1070 of 2020

AD(CO)
GN(11/01/2022)