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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3523 of 2019

S.Bharath

..Appellant/Petitioner

Vs.

1.N.Balakrishnan

(R1 remained exparte before Tribunal.

Hence, his presence is dispensed with)

2.ICICI Lombard General Insurance Company Limited,

No.84/85, Waltax Road,

Chennai -600 003.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.10.2016 made in M.C.O.P.No.493 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Thiruvallur at Poonamallee.

For Appellant : Mrs.A.Subadra
for M/s.M. Malar

For R2 : Mr.K.Poomalai

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 19.10.2016 made in M.C.O.P.No.493 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Thiruvallur at Poonamallee.

3.The appellant is the claimant in M.C.O.P.No.493 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Thiruvallur at Poonamallee. He filed the said claim petition, claiming a sum of Rs.12,00,000/-



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7. Before the Tribunal, the appellant examined himself as P.W.1, Dr. Subramanian was examined as P.W.2 and 12 documents were marked as Exs. P1 to P12. On behalf of the 2nd respondent-Insurance Company, one R. Aiyyanar, Investigation Officer was examined as R.W.1 and two documents were marked as Exs. R1 & R2.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the driver of the car belonging to the 1st respondent as well as due to rash and negligent riding by the appellant and fixed 80% negligence on the part of the driver of the car belonging to 1st respondent and 20% negligence on the part of the appellant and awarded a sum of Rs. 9,28,750/- as compensation and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs. 7,43,000/- towards 80% of the award amount as compensation to the appellant.

9. Challenging the portion of the award fixing 20% contributory negligence on the part of the appellant and for enhancement of compensation, the appellant has come out with the present appeal.

10. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 20% contributory negligence on the part of the appellant without there being any evidence let in by the respondents. The appellant was a student, doing Part Time job and he suffered fracture and multiple injuries in the accident. Due to the injuries, he completely lost his earning capacity. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability. P.W.2/Doctor deposed to the nature of injuries and disability. The Tribunal failed to award compensation by adopting multiplier method. The appellant has taken treatment as inpatient from 02.04.2014 to 01.05.2014 at Sri Ramachandra Hospital, Porur. The compensation awarded by the Tribunal under different heads are meagre and the Tribunal ought to have granted compensation for disability, loss of earning capacity, loss of income separately. The Tribunal failed to grant compensation for loss of amenities and future medical expenses and prayed for setting aside the portion of the award fixing 20% contributory negligence on the part of the appellant and for enhancement of compensation.

11. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant who was a student riding the motorcycle at the time of accident, came to the wrong side, skidded and fell down in front of the car belonging to 1st respondent and suffered injuries. The Tribunal erroneously fixed 80% negligence on the part of the



driver of the car belonging to 1st respondent and awarded excessive amounts towards loss of earning capacity and pain and sufferings. The appellant has not proved that he was doing Part Time work and lost his earning capacity. In view of the same, he is not entitled for compensation by adopting multiplier method. The appellant has not made out any case for enhancement and prayed for dismissal of the appeal.

12. 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.

13. From the materials available on record, it is seen that it is the case of the appellant that while he was riding the motorcycle, the driver of the car belonging to 1st respondent drove the same in a rash and negligent manner and dashed against the motorcycle rode by the appellant and caused the accident. In the accident, the appellant suffered multiple injuries. The appellant examined himself as P.W.1 and marked F.I.R., which was registered against the driver of the car belonging to 1st respondent as Ex.P1. On the other hand, it is the case of the 2nd respondent-Insurance Company that accident has occurred only due to the negligence on the part of the appellant and they examined R.W.1 and filed Ex.R1/Summon and Ex.R2/AR copy. In Ex.R2/AR copy, it was mentioned that appellant fell down and sustained injuries. The Tribunal considering Ex.P1/F.I.R., held that accident has occurred only due to rash and negligent driving by the driver of the car belonging to 1st respondent and by considering Ex.R2/AR copy, held that appellant also contributed negligence to the accident and fixed 20% contributory negligence on the part of the appellant. There is no error in the said portion of the award fixing 20% contributory negligence on the part of the appellant.

14. As far as quantum of compensation is concerned, the appellant has not let in any evidence to prove that he was doing Part Time job and was lost his earning capacity and lost income. Hence, appellant is not entitled to any amount towards loss of earning capacity by adopting multiplier method. P.W.2/Doctor examined the appellant and certified that appellant suffered 40% disability and issued Ex.P10/disability certificate to that effect. The Tribunal accepted the same and awarded a sum of Rs.1,20,000/- for 40% of disability at the rate 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 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,60,000/- (Rs.4,000/- X 40% disability). In view of the excess amounts awarded by the Tribunal towards pain and sufferings and loss of earning, the appellant is not entitled to any enhancement under other heads. 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.	Disability	1,20,000/-	1,60,000/-	Enhanced
2.	Pain and sufferings	2,00,000/-	2,00,000/-	Confirmed
3.	Loss of earning	1,00,000/-	1,00,000/-	Confirmed
4.	Extra nourishment	30,000/-	30,000/-	Confirmed
5.	Transportation	20,000/-	20,000/-	Confirmed
6.	Medical expenses	4,31,000/-	4,31,000/-	Confirmed
7.	Damage to clothes	1,500/-	1,500/-	Confirmed
8.	Attendant charges	26,250/-	26,250/-	Confirmed
	Total	Rs.9,28,750/-	Rs.9,68,750/-	Enhanced by Rs.32,000/-
	80% of the award amount	Rs.7,43,000/-	Rs.7,75,000/-	(Rs.7,75,000/- - Rs.7,43,000/-)

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,43,000/- is hereby enhanced to Rs.9,68,750/- 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 80% of the award amount, (i.e., Rs.7,75,000/-) 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.493 of 2014 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Court, Thiruvallur at Poonamallee. 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. It is made clear that the appellant is not entitled to any interest for the delay period as per the order of this Court dated 19.08.2019 made in C.M.P.No.13348 of 2019 in C.M.A.No.SR.55957 of 2019. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Poonamallee,
Thiruvallur.

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

+1 CC to Mr.K. Poomalai, Advocate sr 4640.
+1 CC to Mrs.M. Malar, Advocate sr 5047

C.M.A.No.3523 of 2019

VBA (CO)
SP(03/09/2021)