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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.1980 OF 2021

Kulandaivel

... Appellant/Petitioner

.Vs.

1. C.Rajakumar
(Set Ex-parte before the Tribunal)

2. The Oriental Insurance Co., Ltd.,
No.3L, Siddhaveerappa Chetty Street,
Dharmapuri Town & District.

... Respondents/Respondents

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.01.2020 made in M.C.O.P.No.788 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.J.Chandran

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.01.2020 made in M.C.O.P.No.788 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari.

2. The appellant is the claimant in M.C.O.P.No.788 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankari. He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.05.2011.



3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the TATA SUMO belonging to the 1st respondent as well as negligent act on the part of the appellant, fixed 50% contributory negligence on the part of the appellant and 50% contributory negligence on the part of the 2nd respondent/Insurance Company, awarded a sum of Rs.3,00,000/- as compensation and directed both the 1st respondent/owner of the TATA SUMO as well as the 2nd respondent/Insurance Company are jointly and severally to pay a sum of Rs.1,50,000/- i.e., 50% of the award amount, as compensation to the appellant.

4. Challenging 50% contributory negligence on the part of the appellant and not being satisfied with the amount awarded by the Tribunal and the appellant has come out with the present appeal seeking enhancement of compensation and setting aside 50% contributory negligence.

5. Though the learned counsel appearing for the appellant raised various grounds in the appeal with regard to enhancement of compensation, when the matter is taken up for hearing, he is questioning only the medical expenses awarded by the Tribunal.

6. The learned counsel appearing for the appellant would contend that the Tribunal has awarded very meagre compensation and without properly considering the evidence on record, the Tribunal has wrongly fixed contributory negligence at 50% on the part of the appellant/claimant. The learned counsel also would contend that the appellant sustained grievous injuries and fractures in the accident and he has taken treatment as in-patient from 30.05.2011 to 19.06.2011 and also undergone surgeries and he incurred Rs.1,91,147.25/- towards medical expenses and despite proving the same by marking Ex.P5, the Tribunal has reduced the same and granted only a sum of Rs.1,20,000/-. He also contended that the compensation awarded under various heads are also very meagre. Therefore, the learned counsel for the appellant seeks for enhancement of the compensation by way of modification.

7. Per contra, Mr.J.Chandran, learned counsel appearing for the 2nd respondent-Insurance Company would submit that the Tribunal has infact granted excessive compensation and rightly fixed the contributory negligence at 50% on each of the drivers of the car involving in the accident. Therefore, he would submit that no interference is required in the award of the Tribunal.



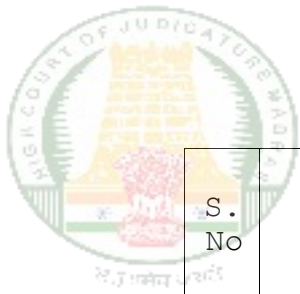
Therefore, he submitted that the award of the Tribunal does not warrant any interference.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

9. A perusal of the award of the Tribunal would reveal that the Tribunal has analyzed the evidence available on record and rightly fixed the contributory negligence at 50:50 on both drivers of the car involved in the accident wherein both the vehicles had head on collision and both vehicles got damaged. This Court does not see any reason to take a different review in this regard.

10. As regards the compensation awarded towards medical expenses is concerned. Admittedly, the claimant had sustained injuries such as (i) fracture in shaft right femur with ipsilateral intertorchanteric fracture (ii) fracture in shaft left humerus (mid 1/3th) (iii) medial condyle fracture in right knee (iv) blunt chest injury and (v) fracture in right ulna shaft. He had taken treatment as in-patient from 30.05.2011 to 19.06.2011 and also undergone surgeries. Though the claimant produced Ex.P5/medical bills wherein it was shown that the medical expenses incurred by the appellant is Rs.1,91,147.25/-, this Court failed to understand as to who the Tribunal has reduced the medical expenses to Rs.1,20,000/-. Therefore, this Court is of the view that the compensation towards medical expenses is liable to be modified and accordingly, the same is modified to the extent of Rs.1,91,000/-. As regards the compensation awarded under various heads are concerned, this Court does not warrant any interference and the same is 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	96,000/-	96,000/-	Confirmed
2.	Medical expenses	1,20,000/-	1,91,000/-	Enhanced
3.	Transportation	3,000/-	3,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Future medical expenses	50,000/-	50,000/-	Confirmed
6.	Pain & sufferings	20,000/-	20,000/-	Confirmed
	Total	Rs.2,99,000/- rounded off to Rs.3,00,000/-	Rs.3,70,000/-	Enhanced by Rs.70,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,00,000/- is hereby enhanced to Rs.3,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. Both the 1st respondent/owner of the vehicle as well as the 2nd respondent/Insurance Company are jointly and severally to deposit 50% of the enhanced award amount now determined by this Court i.e., Rs.1,85,000/- along with interest and costs, less the amount already deposited if any, within a period of two weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(T & P)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Sankari.



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

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+2ccs to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.36891
+1cc to Mr.J.Chandran, Advocate, S.R.No.36352

C.M.A.NO.1980 OF 2021

PP (CO)
PBS/16/11/2021