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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2092 of 2021

R.Palanisamy

..Appellant/Petitioner

Vs.

1. L.S.Basavaraj
2. National Insurance Company Ltd,
Selvanayagi Complex,
Perundurai road,
Near Collector Office,
Erode.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.01.2021 made in M.C.O.P.No.638 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran (R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 11.01.2021 made in M.C.O.P.No. 638 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2.The appellant is the claimant in M.C.O.P.No.638 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. He filed the above said claim petition, claiming a sum of Rs.10,60,000/- as compensation on account of the injuries sustained by him in the accident that took place on 19.04.2017.

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 car as well as motorcycle and by fixing contributory negligence of 80% on the



rider of the car and 20% on the rider of the motor cycle, directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,07,494/- as compensation to the appellant, after deducting the contributory negligence of 20% fixed on him.

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4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the injured/claimant is 45 years old man and suffered backbone fracture and several injuries all over the body and therefore disability fixed at 15% is very low. He further submitted that amount of compensation awarded towards other heads are also very low and the same needs to be enhanced. It is the further contention of the learned counsel for the appellant that the Claims Tribunal had deducted 20% contributory negligence for not having driving license of the two wheeler rider is against law, for the reason that the appellant/claimant is a pillion rider and mere non possession of license will not make contributory negligence and the same has to be proved and further contributory negligence cannot be fixed by assumption, as per decision of Hon'ble Supreme Court in the case of Dinesh Kumar, J alias Dinesh, J Vs. National Insurance Co. Ltd & Others reported in 2018 (1) TNMAC 34

6. The learned counsel appearing for the 2nd respondent-Insurance Company submitted that though the claimant was a pillion rider he should not have travelled in triple in a two wheeler, due to which he met with an accident and therefore the contributory negligence has been fixed on the appellant/claimant and therefore the Claims Tribunal cannot be faulted with. He further submitted that the compensation awarded is reasonable and the Claims Tribunal by way of evidence has clearly held that three persons were in the vehicle and that the person who has ridden the two wheeler did not possess valid licence. He further submitted that the claims Tribunal on considering the oral and documentary evidence has awarded reasonable compensation and therefore the same does not warrant interference.

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

8. The Claims Tribunal, on considering the evidence of P.W.2-Doctor and Ex.P13- Disability Certificate came to the conclusion that though the Doctor assessed 20% disability, it cannot be taken as such and since there is no evidence with regard to the further treatment taken by the claimant from



02.05.2017, fixed the disability @ 15% and therefore the same need not be interfered with.

9. With regard to the other heads, the Claims Tribunal on considering the oral and documentary evidence has rightly arrived at the reasonable compensation.

10. The contention of the appellant/claimant that the Insurance Company has not proved with regard to contributory negligence cannot be accepted for the reason that the Claims Tribunal, in the light of evidence rendered a clear finding that three persons were in the vehicle and that the person who is riding the two wheeler did not possess valid licence. Admittedly no Motor Inspector report has not been furnished by the claimant.

11. With regard to 20% contributory negligence, fixed on the appellant, admittedly, the claimant was a pillion rider and he should not have travelled triple and therefore the punishment prescribed, as per the Motor Vehicles Act, 1988 cannot be accepted to deprive compensation. Grant of compensation to victims is different from punishment prescribed/imposed as per the Motor Vehicles Act. For the sake of convenience, it is relevant to extract Sections 128 and 129 of Motor Vehicles Act, 1988.

"128. Safety measures for drivers and pillion riders.—

(1) No driver of a two-wheeled motor cycle shall carry more than one

person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon.

129. Wearing of protective headgear.—Every person, above four years of age, driving or riding or being carried on a motorcycle of any class or description shall, while in a public place, wear protective headgear



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conforming to the standards as may be prescribed by the Central Government.

Provided that the provision of this sections shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the Central Government may by rules provide for measures for the safety of children below four years of age riding or being carried on a motorcycle.

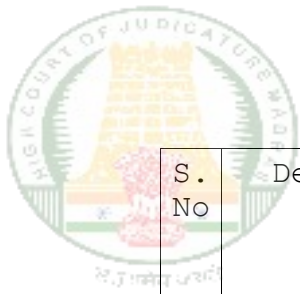
Explanation__ "Protective headgear" means a helmet which, __

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

12. However, considering the fact that the appellant/claimant is a pillion rider, this Court finds that instead of 20% contributory negligence fixed on the part of pillion rider who suffered injury, this Court deems it fit to reduce the same to 15%. Accordingly contributory negligence fixed on the claimant is reduced to 15% and the award 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	45,000/-	45,000/-	Confirmed
2.	Attendant charges	10,000/-	10,000/-	Confirmed
3.	Transpotation	10,000/-	10,000/-	Confirmed
4.	Nutrition	10,000/-	10,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Loss of income for four months	40,000/-	40,000/-	Confirmed
6.	Disability	75,000/-	75,000/-	Confirmed
7.	Medical expenses	1,94,368/-	1,94,368/-	Confirmed
	Total	Rs.3,84,368/-	Rs.3,84,368/-	Confirmed
	Less: Contibutory negligence	Rs.76,874/- (20%)	Rs.57,656/- (15%)	Modified
	Total comensation	Rs.3,07,494/-	Rs.3,26,712/-	Enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,07,494/- is hereby enhanced to Rs.3,26,712/- 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 award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.638 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of two weeks. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Special District Court,
Erode.

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

+1cc to Mr.S.P.Yuvaraj, Advocate Sr No.39983

+1cc to Mr.J.Chandran, Advocate Sr No.40326

C.M.A.No.2092 of 2021

NRJK (CO)
PR (23/11/2021)