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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1486 of 2020

S.Ashik Ali

.. Appellant/Petitioner

Vs.

1.Jak Industries,
Plot No.28/A, New Street,
Arjuna Nagar, Thirumullaivoyal,
Chennai - 600 062.

2.Universal Sompo General Insurance Company Limited,
Capitable Towers, 5th Floor,
554 & 555, Anna Salai, Teynampet,
Chennai - 600 018. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.06.2019 made in M.C.O.P.No.3347 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao

For R2 : Ms.R.Sreevidhya

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid Mode".

2.This Civil Miscellaneous Appeal has been filed challenging the contributory negligence fixed on the part of the deceased as well for enhancement of compensation granted by the



Tribunal in the award dated 26.06.2019 made in M.C.O.P.No.3347 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.3347 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.10.2016.

4.According to the appellant, on 17.10.2016 at about 15.30 hrs., when he was riding the motorcycle bearing Registration No. TN 56 Z 6630 proceeding towards Ambattur, Tannerkulam junction near water service centre, the car bearing Registration TN 13 A 7384 driven by its driver from (Thiruvallur) opposite direction in a rash and negligent manner endangering public safety, hit the appellant's motorcycle and caused the accident. Due to the said accident, the appellant sustained grievous and multiple injuries all over the body. Therefore, the appellant filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained by him in the accident, against the respondents, being the owner and insurer of the car respectively.

5.The 1st respondent-owner of the car and 2nd respondent-Insurance Company remained exparte before the Tribunal.

6.Before the Tribunal, the appellant examined himself as P.W.1 and 22 documents were marked as Exs.P1 to P22. The respondents did not let in any oral and documentary evidence. Disability certificate received from the Regional Medical Board was marked as Ex.C1.

7.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 belonging to the 1st respondent as well as due to negligence on the part of the appellant, fixing 75% negligence on the part of the driver of the car and 25% negligence on the part of the appellant for not possessing valid driving license at the time of accident, awarded a sum of Rs.9,74,212.74/- as compensation and directed the 2nd respondent-Insurance Company, being the insurer of the car to pay a sum of Rs.7,30,660/- towards 25% of the award amount as compensation to the appellant.

8.Questioning the portion of the award fixing 25% contributory negligence on the part of the appellant as well for enhancement of compensation in the award dated 26.06.2019 made in M.C.O.P.No.3347 of 2017, the appellant has come out with the



present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed 25% contributory negligence on the part of the appellant on the ground that he did not possess driving license at the time of accident. The accident occurred only due to the negligence on the part of the driver of the car belonging to 1st respondent and F.I.R. was registered against the driver of the car. The Tribunal ought to have fixed entire negligence on the part of the driver of the car belonging to 1st respondent. The appellant has taken treatment as inpatient for more than 84 days at Sri Ramachandra Hospital, Porur. He was referred to the Regional Medical Board from Government Royapettah Hospital and the Regional Medical Board examined the appellant and certified that appellant suffered 10% disability and issued Ex.C1/disability certificate to that effect. But the Tribunal fixed a meagre sum of Rs.12,000/- as monthly income of the appellant. The accident occurred in the year 2016 and the Tribunal ought to have fixed a sum of Rs.16,000/- as monthly income of the appellant. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside 25% of contributory negligence on the part of the appellant as well as enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident did not occur due to rash and negligent driving by the driver of the car belonging to 1st respondent as alleged by the appellant. The appellant only had driven the uninsured motorcycle without driving license in a rash and negligent manner and caused the accident. The appellant has not proved the avocation and income by producing any valid document. In the absence of acceptable evidence, the monthly income of the appellant fixed by the Tribunal at Rs.12,000/- per month is excessive. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

11.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.

12.It is the case of the appellant that on 17.10.2016 at about 15.30 hrs., when he was riding the motorcycle bearing Registration No. TN 56 Z 6630 proceeding towards Ambattur, Tannerkulam junction near water service centre, the car bearing Registration TN 13 A 7384 driven by its driver from (Thiruvallur) opposite direction in a rash and negligent manner endangering public safety, hit the appellant's motorcycle and caused the accident. To prove the same, the appellant examined



himself as P.W.1 and marked F.I.R. as Ex.P1, which was registered against the driver of the car. To disprove the same, the respondents did not examine the driver of the car or any other independent witness to prove their case that accident has occurred due to the negligence of the appellant. The Tribunal fixed 25% contributory negligence on the part of the appellant only on the ground that the appellant has not produced the driving license. The Hon'ble Apex Court in the judgment reported in 2018 (1) TN MAC 34 (SC) [Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. and others], held that mere failure to produce the driving license is not sufficient to draw adverse inference in respect of contributory negligence and non-production of driving license by claimant is of no consequence and prayed to set aside the contributory negligence fixed. The ratio in the said judgment is squarely applicable to the facts of the present case and the 25% contributory negligence fixed on the part of the appellant is liable to be set aside and is hereby set aside. The appellant is entitled to entire compensation awarded by the Tribunal.

13.It is the contention of the appellant that in the accident, he sustained right femur diaphyseal fracture, right leg both bone fracture with Ex-fix in situ, postop status right femur IMI sirus nailing and right tibia open reduction and internal fixation with plate and screws, malunited fracture right tibia and multiple injuries all over the body. The Regional Medical Board from Government Royapettah Hospital examined the appellant and certified that appellant suffered 10% disability and issued disability certificate/Ex.C1 to that effect. The Tribunal accepted the disability certificate issued by the Medical Board and considering the nature of injuries sustained by the appellant, adopted multiplier method and awarded a sum of Rs.3,22,560/- towards loss of earning capacity, which is proper. The Tribunal considering the entire materials on record, has awarded a sum of Rs.9,74,213/- as compensation to the appellant, which is just and reasonable and hence the same is hereby confirmed.

14.In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.9,74,213/- awarded by the Tribunal as compensation to the respondents, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount 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 judgment to the credit of M.C.O.P.No.3347 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. 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. No costs.

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Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

mpa

To

1.The III Judge,
Small Causes Court
Motor Accident Claims Tribunal,
Chennai.

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

+2cc to Ms.Ramya V.Rao, Advocate SR.No.

C.M.A.No.1486 of 2020

SV-I (CO)
GMY (22/09/2021)