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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1804 of 2014

Shik Allaudeen

...Appellant/Claimant

..Vs..

1. Abdul Rahman
S/o. Mohamed Jamaludeen

2.The National Insurance Company Ltd.,
rep. By its Branch Manager,
at No.40, Rastha Manaveli Street,
N0.2 Road, Mayiladuthurai

...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.03.2014 made in M.C.O.P.No.81 of 2013 on the file of the Motor Accidents Claims Tribunal, District Court, Karaikal.

For Appellant : Mr.Poovendrapurumal
For M/s. Sai Bharath and Ilan

For Respondents: Mrs.N.B.Surekha - R2
Notice unserved - R1
R1-Exparte

JUDGMENT

Dissatisfied with the judgment and decree, dated 14.03.2014 in MCOP.No. 81 of 2013 passed by the tribunal awarding total compensation of Rs.85,000/- along with interest at the rate of 7.5% per annum and the contributory negligence, the claimant is before this Court for enhancement of compensation.

2. It is the case of the appellant/claimant herein that on 12.06.2012 at about 9.15 am, the claimant was travelling in his Hero Honda motorcycle bearing Reg.No. PY02-J-7204, while he was trying to turn his vehicle at Bharathiyar Main Road, Karaikal, at that time, the 1st respondent rode the Bajaj Motorcycle bearing Reg.No.PY02-K-2642 on the same direction in a very rash and negligent manner and dashed against the left side of the claimant's vehicle. Due to the impact, the claimant fell down on



the road and sustained compound fracture of both bones of his left leg and multiple injuries all over the body. The accident had occurred only due to the rash and negligent riding of the rider of the Bajaj Motorcycle bearing Reg.No.PY02-K-2642, hence, the claimant has filed claim petition before the tribunal claiming compensation for the disability and injuries sustained by him for Rs.4,00,000/-. The tribunal has awarded a total compensation of Rs.85,000/- and fixed contributory negligence on the part of the claimant/ appellant herein at 25%. Challenging the quantum and contributory negligence, the claimant is before this Court .

3. On the side of the claimants, two witnesses P.W.1 & P.W.2 were examined and sixteen documents Ex.P1 to P16 were marked. No witness and documents were on the side of the respondents.

4. The learned counsel appearing for the appellant submitted that the tribunal failed to consider Ex.P1/FIR marked by the appellant in which, a case has been registered against the 1st respondent for his rash and negligent riding. There is no rebuttal evidence by the respondent and as such, the tribunal ought to have considered Ex.P1 and foisted the entire liability on the part of the 1st respondent herein. The tribunal ought to have applied multiplier method for his disability and not as percentage method. The learned counsel for the appellant further submitted that the tribunal without considering the age and occupation of the appellant, has awarded a sum of Rs.85,000/- , which is not proper and very low and the same needs to be enhanced.

5. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company submitted that the compensation awarded by the tribunal is fair and reasonable and does not require any interference by this Court and the appeal is liable to be dismissed.

6. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

7. From a perusal of records it is seen that during cross examination, the appellant has admitted the fact that the appellant's vehicle was parked on the western row of the road and all of sudden the appellant turned his vehicle towards south side. Further Ex.P1/FIR reveals that the accident happened when the 1st respondent turned north to south, while the claimant/appellant turned towards south and both of them met with an accident. The tribunal considering the above facts, has concluded that both riders of the two wheelers have contributed



towards the accident and fixed the liability at 25% on the part of the claimant and the 75% on the part of the respondents. Based on the evidence, the tribunal has rightly reached the conclusion, therefore nothing requires to be interfered with the liability and negligence fixed by the tribunal and the same is confirmed.

8. As far as quantum of compensation is concerned, Ex.P2/Discharge slip & Ex.P3/Accident register reveals that the petitioner has sustained grievous injuries. Ex.P16 is the disability certificate assessed by the Doctor/PW2 at 20% . On considering the fact, the doctor who issued disability certificate has not treated the appellant, hence awarded Rs.20,000/- towards disability. Since the accident and injuries are proved through evidence and documents, this Court is inclined to enhance the compensation awarded the tribunal under various heads. Accordingly, the compensation under the head permanent and partial disability for 20% is enhanced to Rs.40,000/- by taking Rs.2000/- per percentage. Considering the Medical Bills marked as Ex.P11 for a sum of Rs.48,907.81/-, this Court enhances the compensation awarded by the tribunal from Rs.33,000/- to Rs.43,000/-. The compensation awarded towards Extra Nourishment at Rs.5000/- is enhanced to Rs.7,000/-. The sum awarded under the heads 'Pain and suffering' and 'Loss of income for two months' is confirmed. It is seen that the tribunal has not granted any compensation towards 'Attendant Charges' and 'Loss of Amenities'. In view of the injuries and disability sustained by the appellant, a sum of Rs.10,000/- each is granted under the said heads. Thus, the compensation awarded by the tribunal is modified as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Permanent and Partial disability	20,000	40,000/- (2000 x 20)
Pain and Suffering	20,000	20,000
Extra nourishment	5,000	7,000
Medical Expenses	33,000	43,000
Loss of Income for two months	7,000	7,000
Attendant charges	...	10,000
Loss of Amenity	...	10,000



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Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Total	85,000/-	1,37,000/-

9. Accordingly, the compensation awarded by the tribunal is enhanced from Rs.85,000/- to Rs.1,37,000/-. In view of the contributory negligence fixed on the claimant/appellant herein at 25%, he is entitled to a sum of Rs.1,02,750/- (75% of the enhanced compensation amount) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

10. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount as modified by this Court along with interest, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation as modified by this Court along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

11. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Judge
Motor Accidents Claims Tribunal,
Karaikal.

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

+1 CC to Mr.T. Sai Krishnan, Advocate sr 17374
+1 CC to M/s. N.B. Surekha, Advocate sr 17433

CMA.No.1804 of 2014

SV(CO)
SP(12/11/2021)