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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2011 of 2020

Vivekanandhan

...Appellant / Petitioner

Vs.

1.M.Thangaraju

2.National Insurance Company Ltd.

Divisional Office - 1

LRN complex

Saradha college Road

Salem-7.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2020 made in M.C.O.P.No.1647 of 2019 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.K.Suryanarayanan
for Mr.M.Mohamed Riyaz

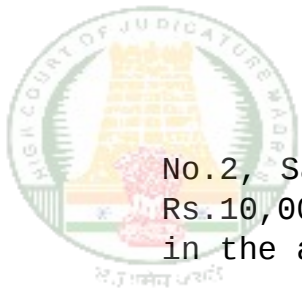
For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 20% contributory negligence on the part of the appellant as well as for enhancement of compensation granted by the Tribunal in the award dated 27.02.2020 made in M.C.O.P.No.1647 of 2019 on the file of Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

2.The appellant is claimant in M.C.O.P.No.1647 of 2019 on the file of Motor Accident Claims Tribunal, Special Sub Court



No.2, Salem. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 14.02.2019.

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3. According to the appellant, on the date of accident, i.e., on 14.02.2019 at about 6.30 a.m., while the appellant was riding the motorcycle from Odapalli to Aayakattur Main Road, near Vinayakar Temple, the driver of the lorry belonging to the 1st respondent, which was coming from Aayakattur, drove the lorry in a rash and negligent manner, dashed against the motorcycle driven by the appellant and caused the accident. In the accident, the appellant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation as against the respondents.

4. The 1st respondent, owner of the lorry remained exparte before the Tribunal.

5. The 2nd respondent/Insurance Company insurer of the lorry filed counter statement denying the averments made by the appellant and stated that the driver of the lorry drove the same in a careful manner. The appellant, who was coming in the opposite direction, alone rode the motorcycle in a rash and negligent manner, hit against the lorry and invited the accident. Therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the appellant. The 2nd respondent/Insurance Company has also denied the age, avocation, income and injuries sustained by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition as against the 2nd respondent.

6. Before the Tribunal, the appellant examined himself as P.W.1 and 11 documents were marked as Exs.P1 to P11. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence. The disability certificate issued by the 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 lorry belonging to the 1st respondent, fixed 80% contributory negligence on the part of the driver of the lorry and fixed 20% contributory negligence on the part of the appellant as he did not possess



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valid driving license at the time of accident, awarded a sum of Rs.2,26,222/- as compensation to the appellant and directed the 2nd respondent/Insurance Company being insurer of the lorry to pay a sum of Rs.1,80,978/- being 80% of the compensation to the appellant.

8.The appellant has come out with the present appeal challenging the portion of the award fixing 20% contributory negligence on the part of him as well as for enhancement of compensation.

9.The learned counsel appearing for the appellant contended that the appellant was in possession of driving license at the time of accident, he produced the same before the Tribunal and marked as Ex.P8. The Tribunal without considering Ex.P8 erroneously held that the appellant did not possess driving license at the time of accident and fixed 20% contributory negligence on the part of the appellant. In the accident, the appellant suffered fracture on his right leg, shoulder, chest and multiple injuries all over the body and has taken treatment as in-patient. He was referred to Medical Board and the Medical Board assessed that the appellant suffered 20% disability. The Tribunal erroneously held that the appellant has not suffered any functional disability. The method followed by the Tribunal is not based on the Motor Vehicles Act or judgment of the Hon'ble Apex Court. The Tribunal ought to have adopted multiplier method for awarding compensation. The appellant was working as a Safety Manager in Pallipalayam paper mills and was earning a sum of Rs.15,747/- per month and proved the same by marking Ex.P5/salary certificate. The Tribunal erroneously fixed monthly income of the appellant at Rs.8,000/-. The amounts granted by the Tribunal towards pain and suffering, loss of amenities, transportation, extra nourishment and attendant charges are meagre and prayed for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that at the time of accident, the appellant did not possess driving license. The appellant has admitted the same in the cross-examination. The Tribunal rightly fixed 20% contributory negligence on the part of the appellant. The appellant has not proved that he suffered functional disability or lost his earning capacity. In the absence of any evidence, the Tribunal rightly granted



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compensation by adopting percentage method. The appellant failed to prove his income by examining the author of Ex.P5. The notional income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal under different heads are 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 and perused the entire materials on record.

12.It is the case of the appellant that while he was riding the motorcycle, the driver of the lorry belonging to the 1st respondent drove the same in a rash and negligent manner and dashed on the motorcycle in which the appellant was riding and caused the accident. In the accident, the appellant suffered injuries and filed claim petition claiming compensation for the injuries. In support of his case, the appellant examined himself as P.W.1 and deposed as to that of the averments made in the claim petition. He marked the F.I.R., which was registered against the driver of the lorry as Ex.P1. On the other hand, it is the case of the 2nd respondent that the accident has occurred only due to negligence of the appellant and therefore, the driver of the lorry is not responsible for the accident. To substantiate their case, the 2nd respondent did not examine the driver of the lorry or any eye-witness. In the absence of any contra evidence to the evidence of P.W.1, F.I.R. and considering the entire materials on record, the Tribunal held that the accident has occurred only due to rash and negligent driving by the driver of the lorry. Having held so, the Tribunal fixed 20% contributory negligence on the part of the appellant on the ground that the appellant did not possess driving license at the time of accident. From the award of the Tribunal, it is seen that the appellant has produced his driving license and marked the driving license as Ex.P8. The Tribunal without considering Ex.P8 erroneously held that the appellant did not possess driving license at the time of accident and fixed contributory negligence for not possessing driving license. The said erroneous finding is liable to be set aside and is hereby set aside. The appellant is entitled to entire compensation awarded.

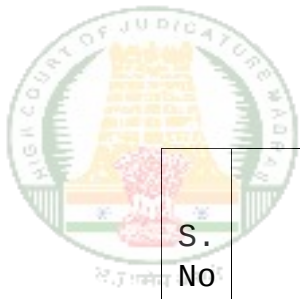
13.As far as quantum of compensation is concerned, the appellant has contended that in the accident, he suffered fracture on his right leg, shoulder, chest and multiple injuries



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all over the body and has taken treatment as in-patient in the hospital. He was referred to Medical Board and the Medical Board after examining the appellant assessed 20% disability. The appellant has not let in any evidence to show that he suffered functional disability. It is not the case of the appellant that he resigned his job or his income is reduced due to the injuries. Hence, the appellant is not entitled to compensation by adopting multiplier method. The Tribunal awarded a sum of Rs.3,000/- per percentage of disability, which 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 2019. In view of the same, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards permanent disability is modified to Rs.1,00,000/- (20% X Rs.5,000/-).

13(i) The appellant in the claim petition contended that he was working as a Safety Manager in Pallipalayam paper mills and was earning a sum of Rs.40,000/- per month. In the grounds of appeal, the appellant has stated that he was earning Rs.15,747/- per month and he produced Ex.P5/salary certificate to show that he was earning Rs.15,263.25 per month. The Tribunal did not accept Ex.P5 as the appellant did not examine author of the salary certificate, fixed Rs.8,000/- per month as notional income of the appellant and awarded a sum of Rs.48,000/- (Rs.8,000/- X 6) towards loss of income for six months. The accident is of the year 2019 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.15,000/- per month is fixed as notional income of the appellant. Thus, the compensation awarded by the Tribunal towards loss of income during treatment period is modified to Rs.90,000/- (Rs.15,000/- X 6). The amounts awarded by the Tribunal towards extra nourishment, attendant charges and damage to clothes are meagre and hence, the same are hereby enhanced to Rs.25,000/-, Rs.10,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	60,000	1,00,000	Enhanced
2.	Pain and suffering	25,000	25,000	Confirmed
3.	Loss of amenities	25,000	25,000	Confirmed
4.	Medical bills	33,722	33,722	Confirmed
5.	Loss of income	48,000	90,000	Enhanced
6.	Transportation	13,500	13,500	Confirmed
7.	Extra nourishment	15,000	25,000	Enhanced
8.	Attendant charges	5,000	10,000	Enhanced
9.	Damage to clothes	1,000	5,000	Enhanced
	Total	2,26,222	3,27,222	Enhanced by Rs.1,46,244/- (Rs.3,27,222/- - Rs.1,80,978/-)
	20% of the award amount	1,80,978		

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,26,222/- is hereby enhanced to Rs.3,27,222/- 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 the entire award amount 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. 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. No costs.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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To

1.The Special Subordinate Judge No.2
Motor Accident Claims Tribunal
Salem.

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

+1cc to Mr.Mohamed Riyaz, Advocate SR.No.3916

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.4454

C.M.A.No.2011 of 2020

VBA(CO)
RVM(13/09/2021)