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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.06.2021

Coram :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 2178 of 2014

R.Vijay Anand

.. Appellant/Petitioners

Versus

1. J.Sathish Kumar
(Notice for R1 dispensed with, since
R1 set exparte before the Tribunal)

2. New India Assurance Co. Ltd.,
Regional Office, Premier Complex
Yercaud Main Road, Salem -16.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order and Decreetal order dated 07.04.2011 made in MCOP No.114 of 2010 on the file of the Motor Accident Claims Tribunal , (Chief Judicial Magistrate), Salem.

For Appellant : M/s.C.Kulanthaivel

For Respondent : R1-Exparte
M/s.R.Neethi Perumal
for Respondent-2

JUDGMENT

This appeal has been filed by the appellant/claimant challenging the contributory negligence fixed on the driver of the two wheeler-TVS XL Super, in which the appellant/claimant was travelling as a pillion rider and also the quantum of compensation awarded by the Tribunal in and by the award dated 07.04.2011 made in MCOP No.114 of 2010 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Salem.

2. The case of the appellant/claimant before the Tribunal is that on 22.03.2007 at about 8.30 a.m, when the appellant/claimant was travelling in a TVS XL Super as pillion rider in Salem to Ayothiapattinam Road, near Ayothiapattinam



river bridge, one Swaraj Mazta Tempo bearing registration No.TN-30-C-9990 came in the opposite direction in a rash and negligent manner, dashed against the TVS XL Super and thereby, the appellant/claimant and the driver of TVS XL Super fell down and due to the said impact, the appellant sustained fracture in right hand below knee and other multiple injuries all over the body and hence, the appellant/claimant claimed a sum of Rs.6,00,000/- as compensation.

3. The claim petition filed by the claimant was resisted by the second respondent herein/Insurance Company disputing the liability, manner of accident and age, occupation and income of the claimant and nature of injuries sustained by the claimant and also disputed the quantum of compensation sought by the claimant.

4. In order to prove the claim, on the side of the claimant, the claimant was examined as PW.1 and one Dr.Sridhar was examined as PW.2. Exs.P1 to P14 were marked on the side of claimant. On the side of Insurance Company, no oral and documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the contributory negligent driving of both the driver of the TVS XL Super, in which claimant travelled as a pillion rider and the driver of the tempo belonging to the first respondent and insured with the second respondent. The Tribunal also fixed contributory negligence of 20% :80% on the driver of the TVS XL Super and the driver of the tempo respectively and passed an award for a sum of Rs.92,300/-, under the following heads and out of which Rs.18,460/- (20% award amount) was deducted towards contributory negligence on the part of the driver of the TVS XL Super and the Tribunal ordered that the claimant is entitled for Rs.73,840/- (80% award amount) only.

Sl.N o	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Medical Bills (as per Ex.P10)	43,300
2	Medical Bills (as per Ex.P11)	5,000
3	Loss of income for three months	9,000
4	20% partial permanent disability	30,000



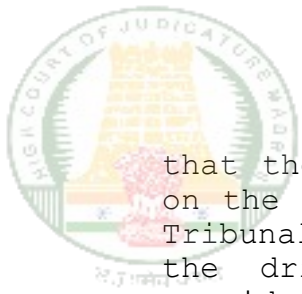
Sl.N o	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)
5	Transportation	2,000
6	Extra nourishment	3,000
	Total	92,300

6. Not being satisfied with the quantum of compensation awarded by the Tribunal and the contributory negligence fixed on the driver of the two wheeler-TVS XL Super, the appellant/claimant has come forward with the present appeal seeking enhancement of compensation.

7. The learned counsel for the appellant contended that in the accident, the appellant sustained fracture injuries and other grievous injuries all over the body. The learned counsel further contended that P.W.2-Doctor assessed 30% partial permanent disability to the claimant, considering the fracture in his right hand front arm and dislocation of head portion of his radial bone, but the Tribunal had taken only 20% disability and awarded Rs.30,000/- by taking Rs.1,500/- per percentage of disability, which is very meagre and atleast Rs.3,000/- is to be taken per percentage of disability. It is further contended that the appellant was a tailor and due to the accident, the appellant has been disabled from continuing his avocation. It is also contended that the Tribunal has awarded a very meagre sum under the other heads also and the Tribunal has not awarded any amounts towards pain and sufferings, attender charges and loss of amenities. Hence, the learned counsel prayed for enhancement of compensation. The learned counsel would contend that the appellant is a third party and pillion rider and when there is no evidence to prove that the rider of the two wheeler was rash and negligent. The tribunal had erroneously fixed 20% contributing negligence on the part of the rider of the two wheeler, needs to interfere of this Court and prayed for setting aside the above findings.

8. Per contra, learned counsel for the second respondent/Insurance Company would submit that the Tribunal, after considering the nature of injuries, disability and treatment taken by the claimant and also considering the age of the claimant, awarded a correct compensation and the same requires no interference by this Court.

9. Insofar as the liability is concerned, this Court is of the view that merely because of the evidence of PW.1/claimant



that there was head on collision, the liability cannot be fixed on the part of the driver of the two wheeler-TVS XL Super. The Tribunal committed error in fixing the liability on the part of the driver of the two wheeler-TVS XL Super, by merely considering the evidence of PW.1/claimant and without any substantial evidence that the rider of two wheeler was rash and negligent. FIR is registered against the driver of the tempo and the driver of the tempo has also admitted the offence and paid the fine amount, which was not considered by the Tribunal. Since the Tribunal erred in fixing 20% liability on the part of the driver of the two wheeler-TVS XL Super, it has to be interfered and this Court is of the view to fix the entire liability on the part of the driver of tempo belonging to the first respondent.

10. The disability suffered by the appellant was fixed at 30% by PW.2-Doctor, but the Tribunal has taken only 20% disability. Considering the fact that PW-2 Doctor, who gave disability certificate, has not given treatment to the appellant/claimant, this Court is of the opinion that 20% disability taken by the Tribunal is correct. The Tribunal has awarded Rs.30,000/- towards disability by taking Rs.1,500/- per percentage of disability, which in the opinion of this Court is meagre. Considering the nature of fracture in the right hand front arm and the dislocation of head portion of his radial bone, this Court is of the view that Rs.2,500/- per percentage of disability is fair and reasonable. Accordingly, the disability compensation arrived at by this Court is Rs.50,000/- (20% x Rs.2500).

11. Since the compensation awarded by the Tribunal under the heads 'medical bills (Ex.A10) and (Ex.A11)' are based on medical bills submitted by the claimant and the same was not disputed by the Insurance Company, the same is hereby confirmed.

12. The Tribunal, considering the age of the claimant and year of the accident, fixed Rs.3,000/- as notional monthly income of the claimant and awarded a sum of Rs.9,000/- under the head loss of income for 3 months. Considering the nature of injuries and the disability, this Court is of the view that the compensation awarded by the Tribunal under the head loss of income for 3 months is just and reasonable and hence, the same is hereby confirmed.

13. The Tribunal has awarded Rs.2,000/- for transportation and that has to be enhanced to Rs.5,000/-. The Tribunal has awarded Rs.3,000/- for extra-nourishment and that also has to be enhanced to Rs.5,000/-.



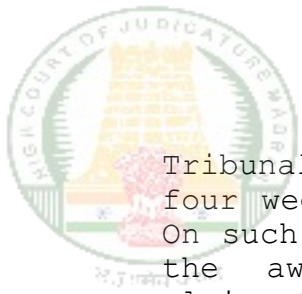
14. The Tribunal has not awarded any amounts towards pain and suffering, attender charges, and loss of amenities. Considering the nature of injuries, period of treatment and fixing of wire, this Court is of the view that a reasonable amount to be awarded under the above heads. Accordingly, this Court awards a sum of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards attender charges and Rs.5,000/- towards loss of amenities.

15. Accordingly, the award passed by the Tribunal, in comparison with the amounts now awarded by this Court, is tabulated hereunder:

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Medical Bills (as per Ex.P10)	43,300	43,300
2	Medical Bills (as per Ex.P11)	5,000	5,000
3	Loss of income for three months	9,000	9,000
4	20% partial permanent disability	30,000	50,000
5	Transportation	2,000	5,000
6	Extra nourishment	3,000	5,000
7	Pain and sufferings	Nil	20,000
8	Attender charges	Nil	5,000
9	Loss of amenities	Nil	5,000
	Total	92,300	1,47,300

16. In the result, this Civil Miscellaneous Appeal is partly allowed, enhancing the amount of compensation awarded by the Tribunal from Rs.92,300/- to Rs.1,47,300/- (Rupees One Lakh Forty Seven Thousand and Three Hundred only) payable by the second respondent/Insurance Company with interest at 7.5% per annum from the date of claim petition till the date of deposit, except for the default period, if any. No costs in this CMA.

17. The second respondent/Insurance Company is directed to deposit the award amount, as assessed by this Court, together with interest at 7.5% p.a., from the date of MCOP till the date of realisation with costs of MCOP, except for the default period if any, less the amount already deposited, to the credit of MCOP No.114 of 2010 on the file of the Motor Accident Claims



Tribunal, (Chief Judicial Magistrate), Salem, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant/appellant herein, through NEFT/RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Salem.

2.The Section Officer
Vernacular Records Section
High Court, Madras.

+lcc to Mr.R.Neethiperumal, Advocate, S.R.No.29260
+lcc to Mr.C.Kulanthaivel, Advocate, S.R.No.28945

CMA. No. 2178 of 2014

AK-II(CO)
CB(28/09/2021)