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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1944 of 2020

Jayaprakash

.. Appellant/Petitioner

Vs.

1.Thangavel

2. National Insurance Company Ltd.,

73, Perundurai Road, Opposite Collector Office,

PB No.911, Erode District

Branch Office: Opp. New Bus Stand, Sankari.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.07.2020, made in M.C.O.P. No.465 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

For Appellant : Mr.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents : Mr.J.Chandran (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the award of the Tribunal dated 23.07.2020, made in M.C.O.P. No.465 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari.

2.The appellant filed M.C.O.P. No.465 of 2012, on the file of the Sub Court, (Motor Accident Claims Tribunal) Sankari, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.05.2012.

3.According to the appellant, on the date of accident, at about 4.20 P.M., when he was walking on the mud portion at the



left side of the road near KSR College, the driver of a Car bearing bearing Registration No. TN-37-AU-5005, belonging to the 1st respondent, drove the same in a rash and negligent manner and dashed against the appellant and caused the accident. The accident occurred due to rash and negligent driving by the driver of the Car belonging to the 1st respondent. In the accident the appellant suffered multiple injuries and fractures. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Car.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, accident occurred when the appellant negligently crossed the road without minding oncoming vehicle and not due to rash and negligent driving by driver of the Car, as alleged by the appellant. The 1st respondent has permitted the driver to ply the Car without any valid driving license at the time of accident. Hence, for violation of policy conditions, the 2nd respondent is not liable to indemnify the 1st respondent for the injured in the accident. In any event, the appellant has to prove his age, income and avocation, injuries sustained in the accident, treatment taken for the same, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and marked 14 documents as Exs.P1 to P14. The 2nd respondent did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to negligence of both the deceased as well as the driver of the Car and fixed 10% contributory negligence on the part of the deceased and 90% negligence on the driver of the Car. The Tribunal awarded a sum of Rs.12,87,724/- and directed the respondents as owner and insurer of the Car to jointly and severally pay a sum of Rs.11,60,000/- being 90% of the award amount, as compensation to the appellant.

8.Challenging the 10% contributory negligence fixed on the deceased and not being satisfied with the amounts granted by the award dated 23.07.2020, made in M.C.O.P. No.465 of 2012, the appellant has come out with the present appeal.



9. The learned counsel appearing for the appellant contended that on the date of accident, when the appellant was walking on the mud portion, extreme left side of the road, the driver of the Car belonging to the 1st respondent drove the same in a rash and negligent manner and dashed on the appellant and caused the accident. The Tribunal erroneously fixed 10% contributory negligence on the part of the appellant. In the accident, the appellant suffered grievous injuries and fractures and has taken treatment at Tirukumaran Hospital, Tiruchengode from 06.05.2012 to 27.05.2012, at Erode Kovai Medical Centre Hospital for further treatment from 13.06.2012 to 02.08.2012, from 26.06.2012 to 29.06.2012, underwent surgery and external fixation in right femur and right tibia. Again he took treatment at Thirukumaran Hospital at Tiruchengode from 07.10.2012 to 10.10.2012 and underwent surgery and femur bone pins were replaced. The Medical Board assessed that the appellant suffered 20% permanent disability and issued disability certificate, marked as Ex.C1. At the time of accident, the appellant was working as a Painter and was earning a sum of Rs.10,000/- per month. Due to the accident, he could not continue his work as he was doing earlier. The Tribunal awarded only meagre amount towards loss of income and disability. The Tribunal failed to award any amount towards loss of amenities and attendant charges and prayed for enhancement of the compensation and setting aside 10% negligence fixed on the appellant.

10. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident occurred only when the appellant suddenly crossed the road from North to South, while the Car was coming from East to West slowly. The appellant is responsible for the accident. The learned counsel appearing for the 2nd respondent further contended that in the FIR, it has been stated that the accident occurred while the appellant was crossing the road. The Tribunal considering the entire materials, both oral and documentary evidence, held that appellant also contributed to the accident. There is no error in the said finding of the Tribunal. The total compensation awarded by the Tribunal under different heads are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

12. It is the contention of the appellant that while he was walking on the left hand side of the road, the driver of the Car belonging to the 1st respondent drove the same in a rash and



negligent manner and dashed on the appellant and caused the accident. In the accident, he sustained injuries, fracture and suffered disability. He has taken treatment as inpatient at Erode KMCH and Tiruchengode Thirukumaran Hospital on different spells viz., from 06.05.2012 to 27.05.2012, from 13.06.2012 to 02.08.2012, from 26.06.2012 to 29.06.2012 and from 07.10.2012 to 10.10.2012, for a period of 169 days. To prove the same, he examined himself as P.W.1 and filed FIR and other documents with regard to treatment taken and Ex.C1 - disability certificate. On the other hand, it is the case of the 2nd respondent that accident occurred only due to negligence of the appellant, when he suddenly crossed the road. To substantiate the same, the 2nd respondent has not examined the driver of the Car or any other independent witness. The Tribunal considering the FIR and failure on the part of the appellant to produce the Accident Register, held that appellant also would have contributed to the accident. The Tribunal has not appreciated the evidence of P.W.1 who denied the suggestion that accident occurred while he was crossing the road. The contents of FIR is not the basis for fixing negligence. The Tribunal must consider the materials placed before it, especially, the evidence let in on oath. In the present case, the respondents have not let in any contra evidence to the evidence of appellant as P.W.1. The Tribunal, on presumption fixed 10% contributory negligence without there being any evidence. Hence, the same is liable to be set aside and is hereby set aside. The appellant is entitled to entire award amount, determined by the Tribunal.

13.As far as the quantum of compensation is concerned, the Tribunal considering the injuries suffered, period of treatment taken and disability sustained, adopted multiplier method and granted compensation towards loss of income. In addition to that, the Tribunal has awarded a sum of Rs.1,00,000/- each towards pain and suffering and disability separately. In view of the excess amount granted towards pain and suffering and disability separately, the appellant is not entitled to compensation for loss of amenities and attendant charges. There is no error in the award of the Tribunal, warranting interference by this Court.

14.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.12,87,724/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The respondents are jointly and severally directed to deposit the entire award amount, determined by the Tribunal, along with interest and costs, 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.465 of 2012. On such deposit, the appellant is permitted to withdraw



the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Sankari.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1CC to Mr.J.Chandran, Advocate, Sr.No.2403

C.M.A.No.1944 of 2020

VBA (CO)
K.RK. (09.09.2021)