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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2661 of 2017

Nallasamy

..Appellant/Petitioner

Vs.

1. Arumugam

2. National Insurance Company Ltd.,
Office at 7, Raja Street,
Gobichettipalayam Town and Taluk,
Erode District.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 14.09.2015 and made in M.C.O.P.No.112/2013 on the file of MACT/IV Additional District Court at Bhavani.

For Appellant : Mr.Ma.P. Thangavel

For Respondents : No appearance (R1)
Mr.S.Vadivel (R2)

J U D G M E N T

The claimant, aged 69 years, an agriculturist/milk vendor, earning a sum of Rs.10,000/- per month met with an accident on 01.02.2012, due to which he sustained multiple injuries. Hence, he filed a claim petition, in M.C.O.P.No.112 of 2013, before the Motor Accidents Claims Tribunal (IV Additional District Court at Bhavani), seeking compensation for a sum of Rs.12,00,000/-.

2. The Claims Tribunal, on consideration of oral and documentary evidence has held that the accident occurred due to rash and negligent driving of the rider of both vehicles and fixed contributory negligence of 30% on the appellant and directed the respondents 1 to 2 to pay a sum of Rs. 6,80,892/- (Rs.9,72,703-2,91,811) as compensation to the appellant/claimant. The break-up details of the same are as under:

Loss of Earning caused due to	
permanent disablement	- Rs.5,24,880/-
Medical expenses	- Rs.2,59,823 /-



Extra nourishment	-	Rs. 50,000/-
Pain and suffering	-	Rs. 50,000/-
Loss of earning during treatment period	-	Rs. 36,000/-
Transport expenses	-	Rs. 50,000/-
Damage to clothes and articles	-	Rs. 2,000/-

Total		Rs.9,72,703/-
Less: 30% contributory negligence	-	Rs.2,91,811/-

		Rs.6,80,892/-

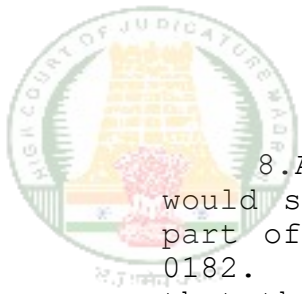
3.Challenging the negligence and quantum of compensation awarded by the Tribunal in the award dated 14.09.2015 made in M.C.O.P.No.112 of 2013, the appellant/claimant has come out with the present appeal.

4.The learned counsel appearing for the appellant contended that the compensation awarded by the Claims Tribunal is very low and the same needs to be enhanced. He further submitted that the tribunal has fixed the 30% contributory negligence on the appellant/claimant, who is the rider of the two wheeler, based on Ex.P2- rough sketch and observation mahazar, which is not correct and the same is liable to be set aside.

5. The counsel further submitted that as per the Judgment of the Apex Court in the case of Syed Sadiq Vs. Deputy Manager, United India Insurance Co. Ltd., (2014 (1) TNMAC 459), the Tribunal ought to have fixed monthly income of the claimant at Rs.6,500/- by adding appropriate addition for increase in cost of living, but the same has not been fixed by the Tribunal. He further submitted that no compensation was awarded towards attendant charges, though the claimant was in hospital continuously for four months.

6. The learned counsel for the Second Respondent/Insurance Company Mr.S.Vadivel submitted that the Tribunal has got power to come to the conclusion, based on the rough sketch and observation mahazar. Therefore the Tribunal has come to the right conclusion that the claimant is also responsible for the accident and fixed 30% contributory negligence on the claimant and the same does not warrant any interference. He further submitted that the claims tribunal on analyzing the oral and documentary evidence has awarded reasonable compensation and the same need not be interfered with.

7.Heard the learned counsel appearing for the appellant as well as learned counsel for the second respondent and perused the entire materials on record.



8.As far as liability is concerned, a perusal of the FIR would show that the accident occurred due to negligence on the part of the Driver of TATA ACE bearing Registration No.TN 36 M 0182. Further the claimant was examined as P.W.1, he deposed that the driver of the TATA ACE bearing Registration No. TN 36 M 0182 came in a rash and negligent manner from the opposite direction and dashed against the appellant. However, the Claims Tribunal, based on Ex.P2-Rough Sketch and Ex.P3- observation Mahazar has come to the conclusion that the rider of the two wheeler is also responsible for the accident and fixed 30% contributory negligence on the appellant/claimant, but no one was examined on the side of the first respondent/driver of the TATA ACE and no documents were produced on his behalf. Therefore, this Court is unable to accept the approach of the Tribunal in fixing contributory negligence of 30% on the appellant/claimant, by completely ignoring the evidence of P.W.1 and the F.I.R. Further the Tribunal came to the conclusion not based on P.W.1 evidence and FIR, the accident was occurred due to the rash and negligent driving of driver of TATA ACE but based on rough sketch and observation mahazar which is not proper. The rough sketch can be used to supplement the oral and other documents, but not to contradict. Therefore, the contributory negligence of 30% fixed against the claimant/appellant is liable to be set aside. Accordingly, the 30% liability fixed against the appellant/claimant by the Tribunal is set aside and this Court fixes the entire negligence on the part of the driver of the TATA ACE.

9.As far as quantum of compensation is concerned though the learned counsel for the appellant submitted that as per the Judgment of the Hon'ble Supreme Court in Syed Sadiq case stated supra, a sum of Rs.6,500/- per month with appropriate addition to the extent of increase in cost of living may be awarded, this Court finds that since the petitioner was aged 65 years at the time of accident, any person with age of 65 would be a person retired. Hence, fixing a sum of Rs.6,000/- per month by the tribunal is not on lower side and therefore this Court is not inclined to interfere with the same. The Court would accordingly determine the compensation based on his pensionable salary of 50%.

10.Further, since the appellant/claimant was in the hospital for continuously four months, this Court is inclined to award a sum of Rs. 50,000/- towards attendant charges.

11. Since, the contributory negligence fixed on the appellant/claimant is set aside, the compensation assessed by the Claims Tribunal i.e, Rs.9,72,703/- is confirmed and after adding the attendant charges awarded by this Court a sum of Rs.50,000/-, the compensation comes to Rs.10,22,703/- and



accordingly the amount of compensation is enhanced from Rs.9,72,703/- to Rs.10,22,703/-.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The respondents are directed to deposit the enhanced award amount of Rs.10,22,703/- (Rupees Ten Lakhs Twenty Two Thousand Seven Hundred and Three only) along with interest @ 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.112 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Additional District Court, Bhavani. However, it is made clear that the appellant/claimant is not entitled to the interest for the default period, as already observed by this Court vide order dated 22.08.2017 in C.M.P.No.11506 of 2017 in C.M.A.No.SR39361 of 2017. On such deposit, the appellant/ claimant 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. The appellant is directed to pay the necessary Court fee as per the order of this Court dated 10.07.2017 made in C.M.P.No.9254 of 2017 in C.M.A.SR.No.39361 of 2017, proportionate to the enhancement of compensation. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal,
IV Additional District Court, Bhavani.

Copy To
The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.22957

+1cc to M/s.S.Vadivel, Advocate, S.R.No.22991

C.M.A.No.2661 of 2017

VSN-II(CO)
RGA(15/11/2021)