



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.M.A. (MD) No. 953 of 2011

WEB COPY

Duraimurugan

... Appellant/Claimant

versus

1. Asokan

2. The Manager,
Sriram General Insurance Company,
No.E8, RIICO Industrial Area,
Sita Pura, Jaipur City,
Rajasthan State - 3022022.

3. Selvaraj

... Respondents/Respondents

(R1 and R3 were set ex parte before
the Tribunal)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decreeal order dated 16.03.2011 made in M.C.O.P.No.259 of 2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge / FTC-II), Pattukottai.

For Appellant : Mr.S.Deenadhayalan

For Respondents : Mr.V.Sakthivel for R2

JUDGMENT

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (FTC-II), Pattukottai in M.C.O.P.No.259 of 2009 dated 16.03.2011.

2. The appellant is the claimant in M.C.O.P.No.259 of 2009. According to him, on 07.12.2008, he was proceeding to Madukkur in a Two-wheeler, from west to east direction, at that time, a lorry, bearing Reg.No.TN01Q 8015, which is owned by the 3rd respondent, coming from the opposite direction in a rash and negligent manner, hit against the motorcycle. Due to which, the rider and pillion-rider were thrown away and sustained fracture and injuries. Immediately, they were taken to the Government Hospital, Pattukottai. After providing first aid treatment, they were admitted to Vinodhagan Hospital, Thanjavur, where, the claimant took treatment as in-patient from 07.12.2008 to

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03.01.2009 and during that period, a surgery was performed on his right leg and a rod was also fixed. Though the claimant sought compensation of Rs.15,00,000/-, the Tribunal has arrived at a compensation of Rs.3,54,543/- and after deducting 25% towards contributory negligence on the part of the claimant, awarded a compensation of Rs.2,65,907/- with interest at 7.5% p.a. Challenging the award, the present appeal has been filed.

3. Mr.S.Deenadhayalan, learned counsel appearing for the appellant submitted that fixing 25% of contributory negligence on the part of the claimant is contrary to law. It is also contended that the Tribunal has failed to appreciate the evidence of P.W.1 in proper perspective and mechanically, fixed the negligence on the part of the claimant.

4. Per contra, Mr.V.Sakthivel, learned counsel appearing for the Insurance Company submitted that the Tribunal, after analysing the evidence adduced by the claimant, has rightly come to the conclusion that the claimant also contributed negligence to the accident and therefore, no interference is required in this matter. It is further contended that the accident took place in the year 2008 and while awarding compensation, the Tribunal has wrongly adopted Rs.3,000/- per percentage of disability and arrived at the compensation of Rs.1,50,000/- under the head of disability.

5. Heard the submissions on both sides and perused the materials available on record.

6. In the instant case, the injured/claimant was examined as P.W.1, wherein, he has narrated the manner of accident. In support of his oral evidence, he produced Ex.P1-First Information Report, Ex.P14-Certified copy of the Judgment in STC No.1037/09. A perusal of Ex.P1 and Ex.P14 would reveal that in a criminal case registered against the driver of the lorry, he pleaded guilty and paid the fine amount. It is an admitted fact that the Insurance Company has not let in any evidence to show that it is a case of head on collision and the claimant also contributed negligence to the accident.

7. A perusal of the Judgment of the Tribunal shows that the Tribunal, on the sole ground that the claimant has not produced his driving licence, came to the conclusion that he also contributed negligence to the accident and fixed the negligence at the ratio of 75% : 25%.

8. In my considered view, the finding on negligence, fixing 25% contributory negligence on the part of the claimant, cannot be countenanced and hence, it is set aside.



9. As rightly contended by the learned counsel for the Insurance Company, in the case of injury, this Court is adopting Rs.2,000/- per percentage of disability. But, the Tribunal, while awarding compensation, has applied Rs.3,000/- per percentage of disability. Hence, it has to be reduced. Further, it is proved before the Tribunal that the claimant sustained 50% of permanent disability, for which, the Tribunal awarded Rs.1,50,000/- as compensation. Therefore, by applying Rs.2,000/- per percentage of disability, the claimant would be entitled to Rs.1,00,000/- (Rs.2,000/- x 50%) as compensation under the head of disability. In respect of other heads, the award of the Tribunal is confirmed. Accordingly, the amount awarded by the Tribunal is re-calculated and modified as under:-

Transport Expenses	-	Rs. 18,100/-
Nutrition	-	Rs. 5,000/-
Medical Expenses	-	Rs. 1,31,443/-
Pain and sufferings	-	Rs. 50,000/-
Disability	-	Rs. 1,00,000/-
Total	-	Rs. 3,04,543/-
Rounded off	-	Rs. 3,04,540/-

10. In the result, the Civil Miscellaneous Appeal is partly allowed, by modifying the award dated 16.03.2011 passed by the Motor Accident Claims Tribunal (Additional District Judge / FTC-II), Pattukottai in M.C.O.P.No.259 of 2009.

11. The Insurance Company is directed to deposit the compensation amount as determined by this Court in this appeal with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant/appellant is permitted to withdraw the same, by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)



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To

The Additional District Judge / FTC-II,
Motor Accident Claims Tribunal,
Pattukottai.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.DEENADHAYALAN, Advocate (SR-2749[F] dated
02/02/2021)

C.M.A. (MD) No. 953 of 2011
29.01.2021

KM (26.02.2021) 4P 5C