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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A.No.2456 of 2021

Madeshwaran

... Appellant/Petitioner

Vs.

1.Maniprasath

2.The Proprietor,
RKM Indane Gas Service,
359, Old Bus Stand Road,
Bhavani Town,
Bhavani Taluk - 638 301.

3.The Divisional Manager,
United India Insurance Company Ltd.,
Office at Mettur Road,
Muthaiah Complex, Erode - 638 011.

... Respondents

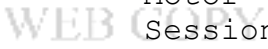
[The Respondents 1 and 2 are remained set ex-parte before the Tribunal, hence, notice may be dispensed with for R1 & R2 in this appeal)

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award and decree dated 23.12.2020 made in MCOP.No.373 of 2018 by the Motor Accidents Claims Tribunal/IV Additional District and Sessions Judge, Bhavani at Erode District.

For Appellant : Mr.M.Guruprasad
for Mr.C.Ramaraj

For Respondents : Mr.S.Arunkumar
for R3
R1 & R2 Notice Dispensed with



[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

7. On appreciation of the oral and documentary evidence, the Tribunal found that the accident had occurred, when the claimant was riding the two wheeler, he dashed against the lorry. Further, the Tribunal on the basis of Ex.P2/Rough Sketch, Ex.P3/Observation Mahazar, Ex.P4/M.V.I report and Ex.P.5/Wound Certificate and the evidence of P.W.1 has held that the claimant did not have valid driving licence and also not wearing helmet at the time of the accident, hence fixed the negligence on the claimant as 35%.



8. Though the Tribunal by awarding amounts under various heads, arrived the compensation as Rs.3,87,550/-, reduced the amount to Rs.2,51,907/- on account of the negligence fixed on the claimant as above referred. Questioning the same, the present appeal has been filed by the claimant.

9. We have heard the learned counsel for the appellant and the learned counsel for the third respondent and also perused the materials available on record.

10. In the instant case, the only question that arises for consideration is whether the negligence fixed on the appellant by the Tribunal is sustainable.

11. From the perusal of the records, it is seen that the Tribunal fixed contributory negligence at 35% on the claimant for the reasons that he was not having valid driving licence and he hit the rear left side of the lorry.

12. Considering the submissions of the learned counsels appearing for both sides and after perusal of the materials available on record, this Court is of the opinion that for the non-possession of licence and non-wearing of helmet, the negligence can be fixed at 20% as there is no material to show that the claimant had hit against the lorry. Hence, we fix 20% negligence on the part of the claimant.

13. With regard to quantum, we hereby confirm the award passed by the Tribunal for Rs.60,000/- towards Pain and Suffering; Rs.80,000/- towards partial Permanent disability by applying Rs.4,000/- per percentage of disability [20x4,000] ; Rs.1,92,551/- (rounded of Rs.1,92,550/-) towards Medical Expenses and Transportation Charges ; Rs.45,000/- towards partial loss of earning and Rs.10,000/- towards Extra nourishment and damages to clothing and articles. In total, the claimant is entitled to Rs.3,87,550/-. Since this Court fixed 20% negligence on the part of the deceased, the claimant is entitled to Rs.3,10,040/- (3,87,550 - 77,510) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The total compensation payable to the claimant is re-calculated and tabulated below:

S. No .	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
1.	Pain and suffering	60,000	60,000



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S. No .	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
2.	Partial Permanent disability	80,000	80,000
3.	Medical Expenses and transportation charges	1,92,550	1,92,550
4.	Partial Loss of Earning	45,000	45,000
5.	Extra Nourishment and Damages to Clothing and Articles	10,000	10,000
	Total	3,87,550	3,87,550
	Less 20% negligence	-	3,10,040

14. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The third respondent/Insurance Company is directed to deposit the above modified award amount with accrued 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/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. The claimant shall pay necessary Court fee, if any on the enhanced compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Bhavani at Erode District.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.24487

+1cc to Mr.C.Ramaraj, Advocate, S.R.No.25218

C.M.A.No.2456 of 2021

VGII(CO)
CT 01/06/2022