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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.617 of 2014

D.Prabhakar

.. Appellant/Petitioner

Vs.

1.S.Manjula

2.United India Insurance Company Limited,
No.45, Arcot Road,
Saligramam,
Chennai - 600 098.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.11.2013 made in M.C.O.P.No.248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.D.Bhaskaran

J U D G M E N T

[The matter is heard through "Video Conferencing"]

This Civil Miscellaneous Appeal has been filed against the award dated 05.11.2013 made in M.C.O.P.No.248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur.

2.The appellant is the claimant in M.C.O.P.No.248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur. He filed the above said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.02.2011.



3. According to the appellant, on 06.02.2011 at about 01.15 P.M., while he was traveling in an auto bearing Registration No. TN 07 AL 6619 from Avadi to Ambattur on the CTH Road near Vaishnavi Temple, an unknown vehicle hit the auto and due to the said impact, the Auto hit another vehicle which was proceeding in front of the auto and due to the same, the appellant sustained comminuted fracture of right patella, lacerated wound in upper lip, lower lip, right nostril and right eye and has taken treatment as inpatient at The RMO Essvee Hospital, Ambattur, Chennai from 06.02.2011 to 15.02.2011. Therefore, the appellant filed the above said claim petition claiming a sum of Rs.3,00,000/- as compensation against the respondents being the owner and insurer of the auto respectively.

4. The 1st respondent-owner of the auto remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company being the insurer of the auto filed counter statement and denied all the averments made by the appellant. The 2nd respondent denied the manner of accident as alleged by the appellant. According to 2nd respondent, on the date of accident, the driver of the auto was driving the same in a slow speed observing the traffic rules and regulations from Avadi to Ambattur, near Vaishnavi Temple. At that time, one unknown vehicle hit the auto and due to the said impact, the appellant suddenly got down from the running auto and invited the accident. Therefore, the accident has occurred only due to the negligence on the part of the appellant and hence, the 2nd respondent is not liable to pay any compensation to the appellant. The 1st respondent's auto was not insured with the 2nd respondent at the time of accident and also the driver of the auto was not possessing valid driving license on the date of accident. The appellant also contributed to the accident and hence, contributory negligence has to be fixed on the part of the appellant. The 2nd respondent denies the age, avocation, income and nature of injuries sustained by the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1, Dr. Saichandran was examined as P.W.2 and 7 documents were marked as Exs. P1 to P7. The 2nd respondent-Insurance Company examined one Maharajan as R.W.1 and marked Investigation Report as Ex. R1.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to the negligence of both unknown vehicle and auto, fixed 75% negligence on the part of the driver of the unknown vehicle, 25% negligence on the part of the driver of the auto belonging to 1st respondent, awarded a sum of Rs.2,45,353/- as compensation to the appellant and directed the respondents 1 & 2 to jointly or severally pay a sum of Rs.61,338/- being 25% of the award amount as compensation to the appellant.

8.Challenging the portion of the award fixing 25% negligence on the part of the driver of 1st respondent as well as for enhancement of compensation granted by the Tribunal in the award dated 05.11.2013 made in M.C.O.P.No.248 of 2011, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed only 25% negligence on the part of the driver of the auto belonging to 1st respondent. The Tribunal ought to have fixed entire negligence on the part of the driver of the auto belonging to 1st respondent as there is no negligence on the part of the appellant and he is only a passenger in the said auto. The Tribunal ought to have applied the theory of composite negligence and fixed entire negligence on the part of the driver of the auto and awarded compensation. The appellant sustained grievous injuries in the accident and proved the same by examining himself as P.W.1, Dr.Saichandran as P.W.2 and by marking documents. P.W.2/Doctor examined the appellant and certified that the appellant suffered 50% disability and issued Ex.P6/disability certificate to that effect. But, the Tribunal has awarded a meagre amount of Rs.1,00,000/- for 50% disability at the rate of Rs.2,000/- per percentage of disability. The appellant has taken treatment as inpatient at The RMO Essvee Hospital, Ambattur, Chennai for 10 days from 06.02.2011 to 15.02.2011. The amounts awarded by the Tribunal towards pain and sufferings, extra nourishment and transportation are meagre. The Tribunal failed to award any amount towards loss of amenities and prayed for fixing entire negligence on the part of the driver of the auto belonging to 1st respondent as well as for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has occurred only due to the negligence on the part of the driver of unknown vehicle and there is no negligence on the part of the driver of the auto belonging to 1st respondent. Therefore, the Tribunal ought to have fixed entire negligence on the part of the



driver of the unknown vehicle. The appellant sustained only simple injuries in the accident and hence, a sum of Rs.1,00,000/- awarded by the Tribunal towards disability is not meagre. The Tribunal considering entire materials on record, has awarded compensation under different heads and the same is not meagre and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

12.From the materials on record, it is seen that according to appellant while he was travelling as passenger in the auto belonging to 1st respondent, an unknown vehicle hit the auto and due to the said impact, the auto in which the appellant was travelling hit another vehicle and due to the same, the appellant sustained injuries. According to the appellant, the accident occurred due to the negligence of the driver of the auto belonging to 1st respondent as well as the driver of the unknown vehicle. The appellant as P.W.1 deposed that auto capsized due to rash and negligent driving by the driver of the auto and driver of unknown vehicle. It is the case of the 2nd respondent-Insurance Company that when an unknown vehicle hit the auto from behind, the appellant jumped from the auto and sustained injuries. The 2nd respondent has not let in any eyewitness to substantiate their case. They examined one Maharajan as R.W.1 and marked only investigation report. The Tribunal considering the pleadings and evidence of appellant and documents filed by him, held that negligence on the part of the unknown vehicle which hit the auto from behind is more and fixed 75% negligence on the part of the driver of the unknown vehicle and 25% negligence on the part of the driver of the auto. The Tribunal considering the averments in the claim petition and evidence of appellant, fixed negligence on both the drivers and there is no error in fixing negligence on the part of the driver of unknown vehicle as well as on the part of the driver of auto belonging to 1st respondent.

13.As far as quantum of compensation is concerned, it is the case of the appellant that in the accident he sustained communitated fracture of right patella, lacerated wound in upper lip, lower lip, right nostril and right eye and multiple injuries all over the body. To prove the nature of injuries and disability suffered by him, the appellant examined himself as P.W.1 and examined Dr.Saichandran as P.W.2. P.W.2/Doctor examined the appellant and certified that appellant suffered 50% disability and issued Ex.P6/disability certificate to that effect. The Tribunal considering the evidence of P.W.2/Doctor and



Ex.P6/disability certificate, has awarded a sum of Rs.1,00,000/- for disability at the rate of Rs.2,000/- per percentage of disability. The accident is of the year 2011 and a sum of Rs.2,000/- per percentage of disability awarded by the Tribunal is meagre. Considering the year of accident, the appellant is granted a sum of Rs.3,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is enhanced to Rs.1,50,000/- (Rs.3,000/- X 50% of disability).

14.It is the further case of the appellant that at the time of accident, he was aged 25 years, working as Assistant Commercial Executive at Usha International Private Limited, Chennai and was earning a sum of Rs.13,500/- per month. The appellant has not produced any documentary evidence to prove his avocation and income. In the absence of any evidence with regard to avocation and income, the Tribunal considering the year of accident, age and nature of work done by the appellant fixed a sum of Rs.7,500/- per month as notional income of the appellant and awarded compensation towards loss of income for three months. The accident occurred in the year 2011. Considering the year of accident, age and nature of work done by the appellant, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries sustained by the appellant in the accident, he would not have attended his work atleast for a period of five months. Thus, the compensation awarded by the Tribunal towards loss of income is enhanced to Rs.40,000/- (Rs.8,000/- X 5 months). The appellant has taken treatment as inpatient at The RMO Essvee Hospital, Ambattur, Chennai for 10 days from 06.02.2011 to 15.02.2011. The Tribunal has not awarded any amount towards attendant charges and loss of amenities. Considering the period of treatment taken by the appellant, he is entitled to a sum of Rs.10,000/- towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, he is entitled to a sum of Rs.15,000/- towards loss of amenities. The Tribunal has not awarded any amount towards damages to clothes. The appellant is entitled to a sum of Rs.1,000/- towards damages to clothes. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000/-	1,50,000/-	Enhanced



2.	Pain and sufferings, extra nourishment & transportation	50,000/-	50,000/-	Confirmed
3.	Medical expenses	72,853/-	72,853/-	Confirmed
4.	Loss of Income	22,500/-	40,000/-	Enhanced
5.	Attendant charges	-	10,000/-	Granted
6.	Loss of amenities	-	15,000/-	Granted
7.	Damages to clothes	-	1,000/-	Granted
	Total	Rs.2,45,353/-	Rs.3,38,853/-	Enhanced by Rs.93,500/-
	25% of the award amount	Rs.61,338/-	Rs.84,713/-	(Rs.3,38,853/- - Rs.2,45,353/-)

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.2,45,353/- is hereby enhanced to Rs.3,38,853/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 1 & 2 are jointly or severally directed to deposit 25% of the award amount, (i.e., Rs.84,713/-) now determined by this Court, along with 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, to the credit of M.C.O.P.No.248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, Tiruvallur. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar



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To

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1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Poonamallee,
Tiruvallur.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.2894

C.M.A.No.617 of 2014

SR(CO)
CB(28/02/2022)