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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2664 of 2017

M.Padmanaban

... Appellant/Petitioner

Vs.

1. M.Selvaraj

2. P.K.Vellinkiri

3. The Oriental Insurance Co. Ltd.,
59, Raja Street,
Gobichetti Palayam Town,
Erode District.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicles Act, 1988, to enhance the Award by modifying the order and award passed in M.C.O.P.No.142 of 2012, dated 22.09.2016, on the file of the Motor Accidents Claims Tribunal, (Sub Court) Sathiamangalam, Erode District.

For Appellants : Mr.K.Selvakumar
for M/s.P.Veena Suresh

For R1 and R2 : Exparte

For R3 : Ms.R.Sreevidhya

JUDGMENT

The claimant in MCOP.No.142 of 2012 on the file of Motor Accidents Claims Tribunal, (Sub Court) Sathiamangalam, Erode District is the appellant herein.

2. The aforementioned MCOP.No.142 of 2012 has been preferred by the claimant owing to injuries suffered due to an accident, which occurred on 13.02.2012 in the evening, at around 5 p.m. At that time, the claimant was driven his Hero Honda Activa bearing registration No.TN-36-T-600 in Puliampatti to



Tiruppur road. When he neared Karivaradharajar Perumal Temple, a bus bearing registration No.TN-46-F- 1473, came in the opposite direction and dashed against his motor cycle and caused injuries to him.

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3. The injuries suffered by the claimant were fracture on the right side of the cheek, another fracture below the right eye, another fracture below the left eye, another fracture in the forehead, another fracture in the thigh bone, another fracture in the chin, another fracture in the wrist and in the left hand and also in the left leg and other abrasion injuries.

4. It was stated that the claimant was in hospital and took treatment for a total period of 37 days. Seeking compensation for the injuries, the claim petition had been filed.

5. The Tribunal, found that the claimant was driving his motor vehicle in the middle of the road and the bus was came in the opposite direction and therefore dashed against the motor cycle. While granting compensation, the Tribunal had stated that 50% contribution was owing to the negligence of the claimant.

6. Thereafter, the Tribunal also examined the compensation to be determined and in this connection had stated that the disability suffered was 75% and therefore granted a sum of Rs.2000/- per percentage disability. A total amount of Rs.1,50,000/- was awarded for disability. This quantum has been challenged by the learned counsel for the appellant, who pointed out that a sum of Rs.3000/- could have been given per percentage of disability. The Tribunal also granted compensation under other conventional heads and also included a sum of Rs.8,33,531/- towards medical expenses and granted a total compensation of Rs.5,43,766/-.

7. Questioning findings on both contributory negligence and also the quantum, the claimant has filed the present Appeal.

8. The learned counsel for the appellant stated that the claimant was driving the motor cycle on the left side of the road, when the bus came and hit him and therefore the determination of contributory negligence at 50% was not proper. However, in this connection, my attention was drawn to the evidence of PW.1 and to the suggestion that he was in the middle of the road. However, P.W.1 had admitted that the rough sketch marked as Ex.P.3 was correct. A perusal of the rough sketch shows that the accident occurred in the middle of the road between Puliyampatti and Avinasi. Therefore, the determination of the Tribunal that there was contribution made by the petitioner also for the accident, has to be taken into consideration.

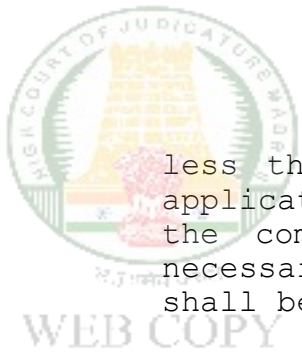


9. The learned counsel for the appellant had relied upon a Judgment of the Division Bench of this Court in the case of New India Assurance Co. Ltd vs. Priya Karthikeyan reported in 2013 (4) TAC 540 wherein, the Division Bench, had taken into consideration a rough sketch. In that particular case, it was found that the vehicle, which caused the accident had crossed the median and caused the accident at 9.30 p.m. on 02.12.2007. The rough sketch had been prepared on 11 a.m on 03.12.2007. It was stated that in that particular road, there was heavy traffic and therefore, the vehicles must be cleared to ensure free flow of traffic. It was also observed that the rough sketch prepared was on the next day and it had been prepared in accordance with the F.I.R. Therefore, the rough sketch was not taken into consideration.

10. In the instant case, there was no delay in the preparation of the rough sketch P.W.1 himself has admitted to the rough sketch. Therefore, this Court is in agreement with the finding of the Tribunal that the appellant was driving the motor cycle in the middle of the road and hence, he also contributed to the accident. In view of that fact, the finding of the Tribunal with regard to contribution of 50% towards negligence is confirmed.

11. The contention of the learned counsel for the appellant that a sum of Rs.3,000/- ought to have been awarded per percentage of disability is sustainable and hence, a sum of Rs.3000/- could be taken per percentage of disability and if it is so taken, the amount to be awarded under the head 'loss of income' would come to Rs.2,25,000/-. The amount awarded under the other heads are retained.

12. In the result, this Civil Miscellaneous Appeal is partly allowed only to the extent of the enhancement of quantum but dismissed with respect to the challenge to determining contributory negligence on the appellant at 50% for causing the accident. The compensation awarded by the Tribunal at Rs.5,43,766/- is hereby enhanced to Rs.6,18,766/- [Rupees Six Lakhs Eighteen Thousand Seven Hundred and Sixty Six only] together with interest at the rate of 7.5% per annum from the date of the appeal till the date of deposit. The third respondent/Insurance Company is directed to deposit 50% of the award amount, now determined by this Court, along with 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 judgment to the credit of M.C.O.P.No.142 of 2012, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathiamangalam, Erode District. On such deposit, the appellant is permitted to withdraw the amount, now awarded by this Court, along with proportionate interest and costs, as awarded by the Tribunal,



less the amount if any, already withdrawn by making necessary application before the Tribunal. Since, this Court had enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mp/rap

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathiamangalam,
Erode District.

Copy to:

The Section Officer,
VR Section,
Madras High Court.

+1cc to M/s.P.Veena Suresh, Advocate, S.R.No.16862

+1cc to M/s.R.Sree Vidhya, Advocate, S.R.No.16365

CMA.No.2664 of 2017

AD(CO)
SU(02/06/2022)