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C.M.A.No.2468 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2468 of 2013

V.P.Subramaniam

... Appellant/Petitioner

Vs

1.K.Uthaman

2.P.Sampath Kumar

3.The Branch Manager,

United India Insurance Co.Ltd.,

Office at Dr.Nanjappa Road,

Coimbatore-18

Coimbatore Town and Taluk and District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 22.08.2012 and made in M.C.O.P.No.27 of 2010 on the file of MACT/Sub Court at Gobichettipalayam.

For Appellant

... Mr.M.Logesh

for M/s.MA.P.Thangavel

For Respondents

... Notice dispensed with [R1 & R2]

(vide Court dated 28.08.2023)

... Ms.R.Rathna Thara [R3]



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JUDGMENT

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Aggrieved by the impugned award dated 22.08.2012.passed by the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam in M.C.O.P.No.27 of 2010, the present appeal has been filed by the appellant questioning the negligence and the quantum of compensation fixed by the Tribunal.

2. On 20.03.2009, at about 2.30 pm, when the petitioner was returning back to his house at Erangatoor in his T.V.S Super Excel bearing Reg No.T.N.36 X 9003 proceeding from Mettupalayam to Sathy main road from west to east direction, the Maruthi Zen car bearing Reg.No.T.N.04.F 7432 belonging to the 2nd respondent which came in the opposite direction, driven by the 1st respondent in a rash and negligent manner, dashed against the petitioner thereby the petitioner sustained greivous injuries. Immediately thereafter, when the petitioner was taken to Ganga Hospital, Coimbatore on 20.03.2009. Thereafter, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Sub Court, Gobichettipalayam claiming



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compensation for the injuries sustained by him.

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3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 and marked Ex.P.1 to Ex.P.6. On the side of the Respondents, the Inspector of Police was examined as R.W.1 & the Senior Assistant of 3rd respondent/insurance company as R.W.2 and marked Ex.R1. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.5,17,464/- and in view of the fact that 50% contributory negligence was fixed on the claimant, accordingly, directed payment of a sum of Rs.2,58,700/-, which is the 50% compensation to be paid by the insurance company. Aggrieved by the quantum of compensation awarded and the negligence fixed against the claimant, the present appeal has been filed by the appellant.

4. Learned counsel appearing for the claimant/petitioner submitted that when the accident had taken place purely due to the negligence on the part of the driver of the 2nd respondent's vehicle, resulting in registration of FIR against the 1st respondent/the driver of the Maruthi Car which being marked as



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Ex.P1, the Tribunal had erroneously fixed 50% of negligence on the part of the claimant which is not sustainable. Further, when the doctor P.W.3, had clearly deposed about the injuries suffered by the claimant and had assessed the permanent disability at 80%, a sum of Rs.1,75,000/- awarded by the Tribunal towards disability by fixing the permanent disability at 70% is grossly inadequate and the same requires enhancement. The compensation awarded under other heads are also minimal. Accordingly, he prayed for allowing the appeal.

5. Per contra, learned counsel appearing for the insurance company submitted that though the FIR has been lodged against the 1st respondent driver, however, upon investigation, it was found that at the time of accident, the petitioner was in a drunken state, while driving the Two Wheeler and the said FIR was referred to as mistake of fact. The said fact has been rightly appreciated by the Tribunal while fixing the negligence on the part of the claimant which cannot be found fault with. Insofar as the claim of the petitioner with regard to quantum of compensation, the Tribunal, after taking



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into consideration all the relevant documents has rightly awarded the compensation under various heads, which does not require any interference.

Accordingly, he prayed for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. However, the grievance of the claimant is with regard to the quantum of compensation awarded and the negligence fixed against the petitioner. With regard to the quantum of compensation, it is claimed by the petitioner that a compensation of Rs.1,75,000/- awarded under the head 'Loss of Disability' by adopting Rs.2,500/- per percentage is on the lower side and the same requires reconsideration. In this regard, this Court had perused Ex.P-5, which is the disability certificate issued by P.W.2 and the same reveals that the appellant



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has suffered the 70% permanent disability. On a careful consideration of Ex.P-5, this Court is of the considered view that the disability, as assessed at 70% and, taken as it is by the Tribunal, is wholly reasonable and justified. It is further seen from the disability certificate that the Tribunal, had erroneously adopted a sum of Rs.2,500/- per percentage of disability and awarded a sum of Rs.1,75,000/-. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.3,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability. Therefore, the amount under the head of disability stands enhanced to a sum of Rs.2,10,000/- ($70 \times \text{Rs.3,000/-} = \text{Rs.2,10,000/-}$).

8. On the issue of contributory negligence, this Court had perused the entire papers including the award passed by the Tribunal below which clearly shows that the award has been passed based on the evidences of R.W.1, R.W.2 and Ex.R1. The evidence of R.W.1 reveals that though the FIR has been lodged against the 1st respondent/driver of the car, having found the negligence on the part of the petitioner, the same was referred to as mistake of fact . A



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perusal of Ex.R1 reveals that at the time of accident, the petitioner was in a drunken state while riding the two wheeler and the same was driven in the rash and negligent manner. Thus it is evident that the petitioner has also equally contributed to the said accident. The Tribunal having taken all the above facts into consideration, has fixed the contributory negligence of the claimant at 50%, which cannot be said to be perverse. This Court finds that the Tribunal has taken all the materials into consideration while fixing contributory negligence and, therefore, the said finding does not warrant any interference.

9. Further, this Court finds the compensation awarded under the other heads viz., a sum of Rs.18,000/- towards 'Loss of earnings'; Rs.5,000/- towards Mental agony and shock; Rs.50,000/- towards Pain and suffering; Rs.2,59,464.70/- towards medical expenses; Rs.5,000/- towards Transport to Hospital and Rs.5,000/- towards Extra nourishment are just and reasonable which requires no interference. However, considering the fact that no compensation has been awarded towards 'Attender Charges', this Court is inclined to award a sum of Rs.10,000/- under the head 'Attender Charges'.



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10. In the above circumstances, the compensation awarded by the Tribunal in M.C.O.P.No.27 of 2010 under the below mentioned heads are modified as under :-

S. No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Permanent disability	Rs.1,75,000/- (70% x Rs.2,500/-)	Rs = 2,10,000/- (70% x Rs.3,000/-) (enhanced)
2.	Loss of earnings	Rs.18,000/-	Rs.18,000/-
3.	Mental agony and shock	Rs.5,000/-	Rs.5,000/-
4.	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
5.	Medical expenses	Rs.2,59,464.70/-	Rs.2,59,464.70/-
6.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
7.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
7.	Attender Charges	-	Rs.10,000/-
	TOTAL	Rs.5,17,464/-	Rs.5,62,464/-

11. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.5,17,464/- to Rs.5,62,464/-** of which compensation to the tune of 50% of contributory negligence on the part of the claimant shall stand deducted. Accordingly, after deducting 50% towards contributory negligence on the part of the claimant, the amount of compensation to be paid by the third



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respondent-Insurance Company is quantified at **Rs.2,81,200/-** and the insurance company is directed to credit the same to the credit of M.C.O.P.No.27 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount as ordered by this Court, along with interest and costs, less the amount, if any, already withdrawn. The Tribunal below shall disburse the enhanced amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. The appellant/claimant is directed to pay the necessary Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeal.

06.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J

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To

- 1.The Motor Accident Claims Tribunal,
Sub Court, Gobichettipalayam
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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