



C.M.A. No. 271 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 271 of 2021

Mahendran @ Ragupathy

... Appellant / Petitioner

Vs.

1. The Chairman,
Mahendra Institute of Engineering
and Technology,
Mallasamudram, Vadugapalayam Post,
Thiruchengode Taluk,
Namakkal District.

2. M/s. National Insurance Co. Ltd.,
Represented by its Divisional Office,
73, Perundurai Road,
Palayapalayam,
Erode District.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.11.2020 passed in M.C.O.P. No. 419 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.



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For Appellant : Mr. M. Guruprasad

For R1 : Ex-parte

For R2 : Mr. S. Vadivel

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant challenging the order of contributory negligence fixed upon the appellant herein and for enhancement of the compensation amount awarded in the Judgment and Decree passed in M.C.O.P. No. 419 of 2018, dated 30.11.2020 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 30.11.2017 at about 8:45AM, the claimant was riding a two wheeler bearing Registration No.TN-28-AV-8442 on Mallasamudram to Vaiyappamalai main road, while he reached near Mamarapatti Arasamara Pillaiyar Kovil curve, a bus bearing



Registration No.TN-34-S-7338 came in the opposite direction in a rash and negligent manner and hit on the two wheeler of the claimant, which resulted in causing severe injuries to him. A criminal case was also registered against the driver of the bus bearing Registration No.TN-34-S-7338 in crime No.338 of 2017 U/s. 279, 338 of IPC on the file of the Mallasamudram Police Station. For the injuries sustained and disability caused, the claimant has come forward with the claim petition seeking compensation for a sum of Rs.30,00,000/- along with interest under section 166 of the Motor Vehicles Act.

4. The first and the second respondent are the owner and insurer of the bus bearing Registration No.TN-34-S-7338, respectively. The first respondent filed a counter and contended that the claimant is responsible for the accident and he has negligently driven the two wheeler in high speed by using cell phone, which resulted in accident and also stated that the said bus is insured with the second respondent insurance company, hence, the first respondent is not liable to pay the compensation and also contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.



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5. The second respondent - insurance company filed a counter and contended that the claimant has not suffered any loss of earning capacity, the accident was occurred in the short curve of the road and also the claimant has driven the two wheeler in a negligent manner hence, in spite of efforts taken by the bus driver, the accident has occurred. The driver of the bus has also raised a complaint, but the same was not registered and further contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.23 were marked, on the side of the respondents R.W.1 was examined and no exhibits were marked and Ex.C1, the disability certificate of the claimant is also marked.

7. Based on the evidence placed on record, the Tribunal in point No.1 has held that the claimant has also contributed to the accident, hence, the Tribunal has fixed the ratio of contributory negligence of 50% on the side of the claimant and 50% on the side of the driver of the bus. In point No.2,



the Tribunal has quantified and granted compensation for a sum of Rs.11,42,209/- to the claimant along with interest at the rate of 9% from the date of filing of claim petition till the date of realization.

8. Aggrieved over the contributory negligence of 50% fixed on the claimant and also for enhancement of the compensation, this appeal has been filed by the claimant.

9. The learned counsel appearing for the claimant has submitted that the driver of the bus alone is responsible for the accident and he has also admitted his guilt and negligence before the criminal Court and paid the fine, but the same was not appreciated by the Tribunal and fixed contributory negligence of 50% on the claimant and the compensation awarded under various heads are on the lower side, hence prays to set aside the contributory negligence fixed on the claimant and to enhance the compensation awarded by the Tribunal.

10. The learned counsel for the Insurance Company has submitted that there is sufficient evidence placed on record including the rough sketch,



which proves that the claimant has also contributed to the accident, hence he is not entitled to contend that the driver of the bus alone is responsible for the accident. Based on the evidences placed on record, the Tribunal has rightly come to the conclusion and fixed 50% negligence on the part of the claimant and prays to confirm the award of the Tribunal.

11. Heard the submissions made on both sides and perused the materials available on record:

12. It is the evidence of the claimant that he drove a two wheeler bearing Registration No.TN-28-AV-8442 on Mallasamudram to Vaiyappamalai main road. While he reached near Mamarapatti Arasamara Pillaiyar Kovil curve, a bus bearing Registration No.TN-34-S-7338 came in the opposite direction without applying horn and hit on the two wheeler of the claimant. The insurance company has also examined the driver of the bus as R.W.1, who has stated that on the date of occurrence, he has taken the bus from Mohanur along with the students studying at Mahendra Institute of Engineering and Technology College and at about 8:45AM, while he reached near Mallasamudram Arasamaram Vinayagar temple, a



two wheeler driven by the claimant came from north to south direction and was speaking over his cell phone, while riding. In order to avoid the accident, the driver of the bus drove the bus on the left hand side of the road and could not go further on the left hand side of the road, since there was a canal, hence he stopped the bus on the left hand side of the road but the rider of the two wheeler applied sudden brake and lost his control over the two wheeler and hit on the bus. The R.W.1 also admitted that the police have registered complaint against him and subsequently, he has paid the fine before the Judicial Magistrate, Tiruchengode.

13. Admittedly, the accident was taken place in the short curve. The Ex.P.18 - Rough sketch and photographs marked shows that the road is not having a big width to allow two vehicles to cross easily and the driver has to be very cautious in that place of curve. The accident is an head on collision and both drivers have not driven the vehicle with due care and caution. On considering the above facts and place of accident and the materials placed on record, it is noted that the two wheeler has crossed and came in the middle of the road and hit on the right hand side of the bus. By applying the principle of *res ipso loquitur*, this Court has analysed the evidences on both



sides, which shows that the claimant has not driven the two wheeler on the left hand side of the road cautiously and that too in a curve shaped road.

14. The Ex.P.16 and Ex.P.17, report of the Motor Vehicle Inspector of the bus and the two wheeler, respectively shows the damaged caused to the vehicles. On perusal of the same, the Tribunal has held that there is no damage to the bus, whereas the front head light of the two wheeler has sustained scratch. This has been considered as one of the corroborated material for supporting the evidence of R.W.1. The Tribunal after considering the above aspects has held that the rider of the two wheeler has equally contributed to the accident. This Court also finds no infirmity in the finding of the Tribunal, since the manner in which the accident occurred and the evidence placed on record only shows that the driver of the two wheeler has also equally negligent and thereby, this Court confirms the finding of the Tribunal that the claimant has equally contributed to the accident.

15. With regard to the quantum of compensation awarded by the Tribunal, the learned counsel for the claimant has submitted that notional income fixed on the claimant is on the lower side and contended that, it is an



admitted case that the claimant is a driver by profession and he has sustained partial permanent disability of 40% as per the examination of the medical board. The Ex.P.4, discharge summary issued by the Universal Hospital, shows that the claimant has sustained following injuries: degloving injury over right leg exposing bones and tendons, Laceration over chin, forehead and over frontal region, Swelling/ Tenderness over nasal region and Multiple minor abrasion over face. The Ex.P.5, the discharge summary issued by the Ganga Hospital shows that the claimant has sustained Type III open fracture of Lateral Malleolus Right ankle with Extensive skin, Soft Tissue loss extending from middle 3rd leg to ankle and foot and Exs.P.7 and 8, x-rays shows that the claimant has also undergone surgery procedure by fixing of plate and screw to treat his right leg fracture. Based on all the above evidences, the Tribunal has held that the claimant could not continue his earlier avocation and fixed the disability as 40% towards loss of his earning capacity. This Court finds no infirmity in the above finding of the Tribunal and the same is hereby confirmed.

16. Other contention raised by the claimant is with regard to the monthly notional income fixed by the Tribunal. Before the Tribunal, the



claimant has examined P.W.3, Tamilselvan, who is the proprietor of M/s. Thirumalai Packers and Movers, he has stated that he used to engage several drivers for carrying out packers and movers service the injured (claimant herein) is one among them, worked under him two years prior to 13.11.2017. But he has not produced any documentary evidence or not even registration number of his firm. In addition to this, the P.W.3 has submitted a photocopy showing his membership in Tamil Nadu Packers and Movers Safety and Development Association, which is also marked as Ex.P.22 to substantiate the evidence of P.W.3, that he is running a firm called M/s.Thirumalai Packers and Movers. In the cross examination of P.W.3, it is elicited that he has not produced any documents such as Income Tax returns filed, income and expenditure accounts, salary payment vouchers relating to the firm. He admitted that he has issued the letter stating that the claimant was paid Rs.20,000/- as monthly wage on his firm. Apart from this, there is no other substantial material to show, what was the amount paid to the claimant as salary.

17. However, this Court is of the view that the Tribunal has fixed Rs.12,000/- as notional monthly income, which is on the lower side since,



the evidence of P.W.3 shows that the claimant was driver by profession and admittedly, the claimant was a heavy goods vehicle driver and he was examined by the medical board and his disability is fixed as 40% partial permanent disability. On perusing the above evidences placed on record, this Court is of the view that the monthly notional income of Rs.12,000/- fixed by the Tribunal has to be modified and the same is increased to Rs.15,000/-. The Tribunal rightly followed the dictum laid down in the judgments of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* [2009 ACJ 1298 SC : 2009 (6) SCC 121], fixed the multiplier as 17 and based on *Erudhaya Priya vs. State Express Transport Corporation Ltd.*, [2020 SSCR 299, 2020 ACJ 2159], 40% future prospectus is awarded. This Court finds no infirmity in the above fixing of multiplier and future prospectus and inclined to confirm the same. Accordingly, the loss of earning capacity of the claimant with modified monthly notional income of Rs.15,000/- is assessed as follows:

Annual income (Rs.15,000/- x 12)	= Rs.1,80,000/-
Future prospects @ 40%	= Rs.72,000/-
Yearly income of the claimant	= Rs.2,52,000/-
Applicable Multiplier	= 17



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Total Amount (Rs.2,52,000/- X 17) = Rs.42,84,000/-

Total Compensation towards loss of earning capacity for Disability fixed @ 40% = **Rs.17,13,600/-**

18. The Tribunal has awarded compensation under the head loss of Income during treatment period, since compensation under the head loss of earning capacity is awarded by treating the disability as functional disability, the compensation awarded under loss of income during treatment period is rejected. Whereas the compensation awarded under other heads are concerned, the Tribunal has awarded a just and reasonable compensation. Hence, this Court is inclined to confirm the same. The Tribunal has awarded interest @ 9% per annum on the compensation award from the date of filing of petition till the date of realization. Hon'ble Apex Court in ***Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Ors., [2005AC J1441]***, has modified the rate of interest to 7.5% per annum based on the prevailing rate of interest in bank deposits. By following the same, 7.5% per annum is fixed as the rate of interest towards the deposit of the compensation amount awarded from the date of filing of claim petition till the date of realization.

19. Accordingly, the award passed by the Tribunal under various



heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Sufferings	1,00,000/-	1,00,000/-	Confirmed
2.	Medical Expenses	5,38,537/-	5,38,537/-	Confirmed
3.	Attender Charges	50,000/-	50,000/-	Confirmed
4.	Transportation Charges	50,000/-	50,000/-	Confirmed
5.	Extra Nourishment	15,000/-	15,000/-	Confirmed
6.	Partial Loss and earnings during the treatment period	60,000/-	---	Rejected
7.	Loss of future earning capacity on 40% disability	13,70,880/-	17,13,600/-	Enhanced
8.	Compensation of continuing as permanent disability	1,00,000/-	1,00,000/-	Confirmed
	Total	22,84,417/-	25,67,137/-	
	Less: 50% Contributory Negligence	22,84,417 x 1/2	25,67,137 x 1/2	
	Total Compensation	11,42,209/-	12,83,569/-	Enhanced

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,42,209/- is hereby enhanced to Rs.12,83,569/- [Rupees Twelve Lakh Eighty Three Thousand Five Hundred and Sixty Nine only] together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till



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the date of realization, excluding the default period, if any. The Second

Respondent - Insurance Company is directed to deposit the amount awarded 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.419 of 2018 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Erode. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

04.10.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:



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1. The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

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

K. RAJASEKAR, J.



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