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C.M.A.No.2195 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2195 of 2019

Anand

... Appellant

..Vs..

1.Ariputhiran

2.The United India Insurance Co., Ltd.,
104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Salem – 636 007.

3.M/s.Blue Way Logistics
D.No.2, Eswari Complex,
Vellakinaru Privu
Mettupalayam Road,
Coimbatore – 641 029.

4.The New India Assurance Co., Ltd.,
D.No.III (721500) 11-19 & 20, 2nd Floor,
Peoples Park Building,
Government Arts College Road,
Coimbatore – 641 018.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 18.09.2018 made in MCOP.No.1193 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court No.1, Salem).

For Appellant

: Mr.C.Paranneedharan

For Respondents

: Mr.J.Chandran for R2

No appearance for R4

Respondents 1 & 3 - Left



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JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 18.09.2018 passed in MCOP.No.1193 of 2016 by the Motor Accidents Claims Tribunal (Special Subordinate Judge No.1, Salem).

2. The facts of the case, in brief, are as under:

On 02.04.2016, at about 5.00 a.m., the claimant who drove the Swaraj Mazda vehicle bearing Regn.No.TN-38-BX-7765 had dashed against the Bolero Jeep bearing Regn.No.TN-30-AT-8258 which was parked at the Salem to Chennai by-pass Road, Samperi, near the petrol bunk due to break down. Due to the said impact, the claimant sustained grievous injuries all over the body. In view of the same, the claimant seeks compensation of Rs.15,00,000/- before the Tribunal. After trial, the claimant was awarded a sum of Rs.14,62,039/- as compensation, fixing contributory negligence on the Insurance Company and the claimant in the ratio of 50% : 50%. Being aggrieved over the aforesaid award, the appellant /claimant has



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filed the present appeal seeking for enhancement of the award granted by the Tribunal.

3. The learned counsel for the appellant would submit that the appellant has grossly erred in awarding compensation amount which is not in consonance with the principles for awards in similar cases. The Judgment and decree of the Tribunal are contrary to law, weight of evidence and probabilities of the case. The Tribunal by mistake of fact has fixed 50% of contributory negligence on the part of the claimant for the accident. It has also fixed Rs.6500/- as monthly income of the claimant which is quite unpracticable and without any proper base. Due to the said accident, the claimant sustained grievous injuries and multiple fractures and multiple plates and screws were fixed in his body. Till now, the appellant is taking treatment for pain and swelling and he could not do his day-to-day work without the support of others. It has awarded very meagre amount under the heads of loss of amenities. Therefore, there is no negligence on the part of the claimant. Hence the appellant/claimant is not liable to pay compensation. It is further submitted that the accident had taken place only



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due to the negligence of the driver of the Bolero Jeep who parked the vehicle due to break down. In view of the fact that the accident had occurred due to the negligence of both the vehicles, the Tribunal has imposed 50% liability on the Insurance Company and the appellant. However, the compensation amount being borne by the claimant at 50% is not sustainable and liable to be quashed.

4. On the contrary, the learned counsel for the second respondent/Insurance Company would submit that the driver of the Swaraj Mazda had caused the accident. Thus the Tribunal has rightly awarded the reasonable compensation since the vehicle was insured with the aforesaid Insurance company at the time of the accident. It does not require any interference of this court and prays for dismissal of the appeal.

5. Heard both sides and perused the entire documents produced before this Court.

6. During the trial, on the side of the claimant, two witnesses were



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examined as P.W.1 and P.W.2 and eighteen documents were marked as Ex.P.1 to Ex.P.18. On the side of the respondents, neither witness was examined nor document marked.

7. On perusal of the award, it is seen that the Tribunal has fixed the liability in the ratio of 50% : 50% to be borne by the Insurance Company and the claimant. It is to be noted that the claimant had hit on the parked vehicle. The Tribunal by mistake of fact has fixed 50% contributory negligence on the claimant. In the event of both the parties are liable for the accident, the ratio of contributory negligence has to be fixed in accordance with the law.

8. On perusal of the entire records, it is seen that the claimant is stated to have driving Swaraj Mazda vehicle bearing Regn.No.TN-38-BX-7765 which is also recorded in the FIR/Ex.P1. Further, the said vehicle had hit the parked vehicle bearing Regn.No.TN-30-AT-8258 (Bolero Jeep) at its back side. The said accident had happened due to darkness and there was neither signal nor any indicator applied by its driver to avoid the accident.



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But, the Tribunal has held that both the drivers of the vehicles are equally liable for the accident and hence, fixed 50% : 50% contributory negligence on them. After considering the aforesaid all aspects, the Tribunal has fixed the liability in the ratio of 50% : 50% on the Insurance Company and the claimant respectively.

9. Taking note of the above submissions of the learned counsel for the appellant / claimant and that the claimant is aged about 24 years and was earning Rs.15,000/- per month as a driver and that the driver of the Bolero Jeep neither apply indicator nor give signal while parking his vehicle due to breakdown near the petrol bunk, this court is of the considered view that the driver of the Jeep is liable to compensate to the claimant to the major extent. Therefore, this court is inclined to modify the ratio of liability as 70% : 30% fixed on the Insurance Company and the claimant respectively. In other words, the compensation awarded by the Tribunal is modified by changing ratio on the negligence in which 70% of the award amount shall be borne by the Insurance Company and the balance 30% of the award amount shall be borne by the claimant. It would be appropriate to take Rs.7500/- as monthly



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income of the injured claimant. There is no need to change the multiplier adopted by the Tribunal. Further, the 1/2 deduction towards personal expenses made by the Tribunal also does not require any interference. If Rs.7500/- is taken as the monthly income of the claimant, after adding 40% towards future prospectus of the deceased and 1/2 of the amount is deducted and the multiplier of 18 is adopted, the loss of dependency works out to Rs.7,93,800/(Rs.7500x40%=3000,7500+3000=10500;10500x12x18x50/100=11,34,000/- ; 1134000 x 70% = 7,93,800/-).- Accordingly, the amount awarded by the Tribunal towards loss of dependency stands modified to Rs.7,93,800/-.

10.The details of the modified compensation are as under:

HEADS	AMOUNT (Rs.)
pain and sufferings	75,000/-
Future Medical Expenses	10,000/-
Medical Bills	7,33,889/-
Transport Expenses	25,000/-
Extra Nourishment	25,000/-



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Attender Charges	25,000/-
Damages to clothes	1,750/-
Loss of Amenities	75,000/-
Loss of dependency due to (70%)permanent disability	7,93,800/-
TOTAL	17,64,439/-

11. Thus, the appellant / claimant is entitled to the modified compensation of Rs.17,64,439/-. It is made clear that for the enhanced amount of Rs.3,02,400/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. Other terms of the award of the Tribunal shall remain the same.

12.The Civil Miscellaneous Appeal is partly allowed. No costs.

13.The respondents 1 and 2 are directed to deposit the modified compensation amount of Rs.17,64,439/- jointly and severally together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less



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the amount already deposited, if any, to the credit of M.C.O.P.No.1193 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Subordinate Judge-I, Salem) within a period of six weeks from the date of receipt of copy of the Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter.

14. Since the compensation amount now awarded is Rs.17,64,439/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced amount.

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Index: Yes/No

Internet: Yes/No

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A.A.NAKKIRAN, J.

gv

To

- 1.The Section Officer
V.R.Section, High Court of Madras.
2. The Motor Accidents Claims Tribunal
Special Subordinate Judge-I Salem.

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