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C.M.A.No.1042 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1042 of 2020

R.Jothimani

... Appellant

Vs.

1. S.Senthilkumar
2. IFFCO-TOKIO General
Insurance Co. Ltd.,
No.138/2, 2nd Floor, LMR Shopping
Arcade,
Opp. MGM Theatre,
Namakkal, Namakkal District.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgement dated 13.08.2019 passed in M.C.O.P.No.940 of 2016 on the file of Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.S.Sankar for
Mr.C.Thangaraju
For Respondents : Mr.J.Michael Visuvasam for R2
R1 Notice Served

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the judgement dated 13.08.2019 passed in M.C.O.P.No.940 of 2016 on the file of Motor



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Accidents Claims Tribunal / Chief Judicial Magistrate, Namakkal.

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2. It is the case of the claimant that on 04.06.2015, at about 7:40 pm, when the petitioner crossed the road after buying provisions from grocery in order to get into his car and when he opened the door of the car, a motor cycle bearing registration No.TV 88 7935 belonging to the first respondent came from the north to south direction in a rash and negligent manner dashed the petitioner, resulting the petitioner in sustaining grievous injuries. Due to the said accident the claimant, filed a claim petition before the Tribunal seeking a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, the claimant examined one witness viz., P.W.1 and marked Ex.P1 to P.20. On the side of respondents neither any witnesses were examined nor any documents were marked. After adjudication, the Tribunal awarded a sum of Rs.1,76,000/- as compensation to the claimant / first respondent after deducting 20% contributory negligence as against the claimant. Challenging the same, the present appeal has been filed by the appellant / claimant for enhancement of compensation.



4. The learned counsel appearing for the appellant / claimant submits

that due to the rash and negligent driving of the driver of the first respondent's vehicle the said accident had happened, which resulted the appellant / claimant in sustaining disability at the rate of 10%, for which, he is entitled to claim compensation at the hands of the 1st and 2nd respondent. Though the entire negligence has to be contributed by the driver of the first respondent's vehicle, however, the Tribunal has erroneously fixed 20% negligence for the cause of the accident which is *per se* unsustainable. He further contended that though the accident is of the year 2015, the Tribunal as per the existing law, at the relevant point of time, ought to have adopted a sum of Rs.4,000/- per percentage of disability, however, without doing so, the Tribunal awarded only a sum of Rs.3,000/- per percentage of disability which is on the lower side and the same requires interference.

5. Per contra the learned counsel appearing for the second respondent / insurance company submits that based on the evidence of P.W.1, so also considering the age of the claimant and also the disability certificate issued by the medical board, the Tribunal has fixed the disability sustained by the claimant at the rate of 10% and awarded a compensation at the rate of



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Rs.3,000/- per percentage of disability and arrived at a sum of Rs.30,000/-

towards permanent disability. The other heads awarded by the Tribunal are also just and reasonable. Hence, he prayed to dismiss this appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the Appellant/claimant is with regard to the negligence fixed on the part of the claimant and also the quantum of compensation awarded by the Tribunal.

8. Though the accident is of the year 2015, however at the relevant point of time the Tribunal ought to have fixed Rs.4,000/- at the rate of per percentage of disability, however, the Tribunal erroneously fixed the a sum of Rs.3,000/- at the rate of per percentage of disability which cannot be sustained. Hence, this Court fixes a sum of Rs.4,000/- per percentage of disability.



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Therefore, the amount under the head Permanent Disability is modified to a sum of Rs.40,000/- ($10\% * 4000 = 40,000/-$).

9. Insofar as the compensation awarded under the other heads are concerned, the same is just and reasonable and no interference is warranted with the award of compensation under the said heads.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Pain and suffering	40,000/-	40,000/-
Permanent disability	30,000/-	40,000/- (enhanced)
Physiotherapeutic bills	20,000/-	20,000/-
Transportation and ambulance charges	23,000/-	23,000/-
Medical Bills	1,00,000/-	1,00,000/-
Total	2,20,000/-	2,30,000/-

11. Though is clear from the contents of the F.I.R. that while the claimant was crossing the road, the alleged accident had taken place and based on the evidence of P.W.1 the Tribunal had observed that it is the duty cast upon



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the pedestrian to take utmost care and caution while crossing the road, and has fixed 20% negligence as against the claimant, however, this Court is of the view that when a person is crossing the road, it is the responsibility of the rider of the motor cycle to apply the brake and in the present case on hand the rider of the first respondent's vehicle dashed the claimant. In such a backdrop, fixing 20% negligence on the part of the claimant would not be just and appropriate. Hence, the 20% contributory negligence fixed as against the claimant is set aside and the insurance company is liable to pay the entire compensation awarded by this Court in favour of the claimant.

12. Accordingly, the appeal is partly allowed in the aforesaid terms and the impugned award of the Tribunal is modified to a sum of Rs.2,30,000/- by fastening the entire negligence on the rider of the first respondent's vehicle. As the second respondent is the insurer of the first respondent's vehicle, the 2nd respondent-insurance company is directed to deposit the above said amount awarded by this Court to the credit of M.C.O.P.No.940 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a



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copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

14.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. The Motor Accidents Claims Tribunal / Chief Judicial Magistrate, Namakkal.
2. The Section Officer, V.R. Section, High Court, Madras.

M.DHANDAPANI,J



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