



C.M.A.No.1349 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1349 of 2022

Jothikrishnan

... Appellant

Vs

1.Asish Sanyal

2.Iffco-Tokio General Insurance Company Limited,
Rep., by its Manager, No.148, Vinayaka Complex,
2nd Floor, Opp. Ganesh TVS Showroom,
Erode – 638 001.

... Respondent

[R1 remained ex parte and hence notice to R1 is dispensed with]

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in judgment dated 12.08.2021 made in M.C.O.P.No.775 of 2017 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Erode.

For Appellant : Mr.C.Kulanthaivel

For Respondents : R1-Ex parte
Mr.S.Arun Kumar, for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 12.08.2021 made in MCOP.No. 775 of 2017 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Erode.

2. The appellant filed M.C.O.P. No.775 of 2017 on the file of the the Motor Accident Claims Tribunal cum Special District Judge, Erode claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.07.2017.

3. According to the appellant, on the date of accident, i.e. 22.07.2017 while he was riding the motorcycle bearing Registration No.TN-36-Y-9687, on Kovai to Salem NH Vattamalai, near JKK Nataraja College, towards West to East, the car bearing Registration No.WB-06-D-7699, which was driven by the driver in a rash and negligent manner hit behind the appellant, that in the above said accident, the appellant / Jothikrishnan



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sustained grievous injuries and hence filed claim petition claiming compensation against the respondents.

4. The first respondent remained ex parte before the Tribunal.

5. The second respondent filed counter statement denying all the averments made by the appellant in the claim petition. According to the second respondent, accident occurred only due to the negligent act of the motorcyclist who suddenly swerved his vehicle to his right side and attempted to cross the road and invited the accident; that the respondent is not liable to pay compensation to the appellant; and that in any event the total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. The appellant examined himself as PW1 and marked 15 documents Ex.P.1 to Ex.P.15. On the side of the respondent, one Sathya was examined as RW1 and 8 documents were marked as Ex.R1 to Exs.R8. Disability certificate issued by the Medical Board was marked as Ex.C1.



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7. The Tribunal held that the accident occurred due to the negligence of both the driver of the car belonging to the 1st respondent as well as the appellant, fixed negligence in the ratio 75:25 on the driver of the car and appellant respectively and directed the second respondent to pay a sum of Rs.1,47,006/- as compensation to the appellant. Aggrieved by the said judgment, the appellant has preferred the present appeal seeking enhancement of compensation.

8. Mr.C.Kulanthaivel, learned counsel for the appellant submitted that the appellant suffered grievous injuries as can be seen from the discharge summary Ex.P6 and the disability certificate issued by the Medical Board marked as Ex.C1. However, the Tribunal had taken the loss of income during the treatment period as Rs.20,000/-, which is very meagre. The learned counsel submitted that the Tribunal ought not to have fixed 25% contributory negligence on the appellant. There is no evidence to infer that the appellant had contributed to the accident. The FIR was lodged against the driver of the offending vehicle and hence, the finding of the Tribunal fixing 25% contributory negligence is erroneous.



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9. The first respondent remained ex parte before the Tribunal.

10. The learned counsel for the second respondent submitted that the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

11. The questions involved in the above appeal are-

- i) Whether the Tribunal was right in fixing 25% contributory negligence on the appellant?
- ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

12. In order to prove the accident, the appellant had examined himself as P.W.1 and marked the final report Ex.P15 based on the FIR lodged by the appellant against the driver of the offending vehicle. Though the final report shows that the driver of the offending vehicle was guilty of negligence, this Court is of the view that in order to determine as to who is liable for negligence, the evidence adduced before the Tribunal has to be considered. The accident said to have taken place while the deceased was



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travelling on the road from West to East and when he attempted to take right towards South, to attend his college where he was working. The offending vehicle is said to have come from behind and dashed against the vehicle. The evidence shows that the place where the accident took place is not a designated place for crossing. It is also seen from the rough sketch Ex.R2 that the accident took place near the centre median. The above facts would clearly show that that appellant had crossed road at a place which is not designated for crossing. The existence of centre median also confirms this fact. The evidence suggests that the appellant had crossed the road diagonally to take a right. He ought to have been careful in such circumstances. The driver of the offending vehicle is also liable for negligence in not taking due care and caution for watching out for vehicles taking a right turn. In the facts and circumstances of the case, the Tribunal was right in fixing 25% contributory negligence on the appellant. Therefore, the finding with regard to contributory negligence by the Tribunal is confirmed.



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13. As regards quantum, this Court finds that the appellant had suffered fracture in his leg. Considering the nature of treatment and the injury suffered by him, this Court is of the view that he would have lost income for a period of three months. The appellant had produced Ex.P14 salary certificate to show that he was earning Rs.12,150/- per month. There is no reason why this certificate should not be accepted. Hence, this Court is of the view that the compensation under the head loss of income has to be enhanced to Rs.36,450/- (Rs.12,150X3).

14. Considering the nature of injuries, the amount award towards pain and suffering is meagre and hence, the same is enhanced to Rs.50,000/-. The amounts awarded under other heads are just and reasonable and hence, they are confirmed. Thus, award of compensation is enhanced as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	30,000/-	50,000/-	Enhanced
2.	Attendant charges	10,000/-	10,000/-	Confirmed



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2.	Transport expenses	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Medical expenses	66,008/-	66,008/-	Confirmed
5.	Loss of income	20,000/-	36,450/-	Enhanced
6.	Disability	50,000/-	50,000/-	Confirmed
	Total	1,96,008/-	2,32,458/-	
	Less 25% Contributory Negligence	49,002/-	58,115	Enhanced by Rs.27,337/-
	Net Compensation	1,47,006	1,74,343	

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,47,006/- is hereby enhanced to Rs.1,74,343/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit 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 (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount with interest and costs, less the amount if any, already



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withdrawn. The appellant is directed to pay the necessary Court Fee, if any,
on the enhanced award amount. No costs.

31.07.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To

- 1.The Motor Accident Claims Tribunal cum
Special District Judge, Erode.
- 2.The Manager,
Iffco-Tokio General Insurance Company Limited,
No.148, Vinayaka Complex,
2nd Floor, Opp. Ganesh TVS Showroom,
Erode – 638 001.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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