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C.M.A.No.717 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 13.06.2023**

**Coram:**

**THE HONOURABLE MRS.JUSTICE N.MALA**

**CMA.No.717 of 2022**

T.Rajasekar

...Appellant

Vs.

1.R.Sampathkumar

2.P.Rankaraj

3.HDFC ERGO General Insurance Company Ltd.,  
Branch Office at 4th Floor,  
Raja Narayanan Towers,  
Race Coerce Road, Gopalapuram,  
Coimbatore-641 018.

...Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and decree passed in M.C.O.P.No.1983 of 2018 dated 29.12.2021 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.S.P.Yuaraj

For RR1 and 2 : Ex-parte

For R-3 : Mr.N.Somasundar



C.M.A.No.717 of 2022

## **JUDGMENT**

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This appeal is filed challenging the Judgment and decree passed in M.C.O.P.No.1983 of 2018 dated 29.12.2021 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

2. The appeal is filed by the claimant seeking enhancement of compensation. According to the claimant, on 26.08.2018, while he was driving along with two other, in a motor cycle, a car driven by its driver in a rash and negligence manner, came in the opposite direction and dashed against the two-wheeler, causing grievous injuries to the claimant.

3. According to the claimant, he was working as a Coolie and earning a sum of Rs.10,000/- per month. The claimant was aged 36 years at the time of accident and due to the injuries sustained, he was not able to do his work as before. The claimant therefore filed claim petition seeking Rs.10,00,000/- as compensation.

4. The first and second respondent are the driver and owner of the car and they remained ex-parte before the Tribunal and the claim petition was contested by third respondent/Insurance Company.



*C.M.A.No.717 of 2022*

5. The third respondent/Insurance company filed detailed counter denying the accident, negligence, liability and quantum. According to the third respondent, the claimant contributed to the accident as he was in drunk mood at the time of the accident and also the rider of the two-wheeler did not possess a valid driving license at the time of the accident.

6. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.11. The disability certificate issued by the Medical Board was marked as Ex.C.1. On the side of the respondents, one witness was examined before the Tribunal and four documents were marked.

7. The Claims Tribunal, on an assessment of the entire evidence on record, found that the claimant contributed to the accident and therefore Tribunal deducted 30% towards contributory negligence of the claimant.

8. The Claims Tribunal fixed the total compensation at Rs.1,95,425/-, deducted 30% towards the claimant's contributory negligence and awarded a sum of Rs.1,36,797/- along with 7.5% interest as compensation. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the claimant has filed the above appeal. The appeal is also filed questioning the



C.M.A.No.717 of 2022

finding on contributory negligence.

WEB COPY

9. The learned counsel for the appellant submitted that the claimant was only a pillion rider and as such he could not have contributed to the accident. The learned counsel therefore submitted that the deduction of 30% towards contributory negligence is unsustainable. He further submitted that the Claims Tribunal erred in awarding Rs.1,000/- per percentage of disability, over looking the fact that the accident had taken place in the year 2018. The learned counsel further submitted that the award towards other heads were very much on the lower side and disproportionate to the injuries sustained by the claimant.

10. The learned counsel for the 3<sup>rd</sup> respondent/ Insurance company on the other hand, submitted that the Claims Tribunal was justified in deducting 30% towards contributory negligence of the claimant as he in cross-examination had admitted that he was in a drunken state at the time of the accident. The learned counsel further submitted that the award of the Claims Tribunal towards the other heads were just, fair and reasonable.

11. I have heard both the learned counsel and have perused the materials placed on record.



C.M.A.No.717 of 2022

12. It is seen that the claimant was triple riding, and all the three were in a drunken mode at the time of the accident. The rider of the two-wheeler did not have valid driving licence. The Claims Tribunal therefore on a consideration of the evidence on record, particularly the evidence of P.W.1 and Ex.R.2, the Accident Register, found that the claimant had contributed to the accident and deducted 30% towards contributory negligence of the claimant. I do not agree with the submissions of the learned counsel for the appellant that as the appellant was pillion riding, he could not have contributed to the accident. Ex.R.2, the Accident Register clearly reveals that the claimant was drunk. The claimant in his cross-examination admitted the statement in Ex.R.2. Therefore, I find no infirmity in the finding of the Claims Tribunal, on contributory negligence. Therefore, I confirm the finding of the Claims Tribunal on negligence and deduction of 30% thereof.

13. As regards the quantum of compensation, I find that the Claims Tribunal, accepted Ex.C.1, the disability certificate where under the disability was assessed at 50%. In my view, as the accident took place in the year 2018 the claimant would be entitled to Rs.5,000/- per percentage as laid down in the case of *M.Chinnathambi Vs. S.Deepa* reported in 2020(1) TNMAC 617. Therefore the award towards permanent disability is arrived at Rs.2,50,000/-



C.M.A.No.717 of 2022

(Rs.5,000 x 50% = 2,50,000/-)

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14. Considering the nature of injuries sustained by the claimant and the period of hospitalisation the amounts under the other heads are modified. No doubt, there is no proof to support the income of the claimant, but in any event, as the accident took place in the year 2018, taking into consideration the cost escalation, for the year 2018, the income is arrived at Rs.9,000/- per month. Therefore, the compensation towards loss of income is fixed at Rs.54,000/- (Rs.9,000/- per month for six month). From Ex.P.2, it is seen that the claimant was hospitalised on 26.08.2018 and discharged on 06.09.2018. Several entries thereafter would clearly show that the claimant was treated till 06.04.2019. Hence the award under other heads, in my view, need to be enhanced.

15. In the light of the said discussion, the award of the Claims Tribunal is modified as follows:

| <i>S.No.</i> | <i>Various Heads</i> | <i>Award by Tribunal<br/>(amount in Rs.)</i> | <i>Award by this court<br/>(amount in Rs.)</i> |
|--------------|----------------------|----------------------------------------------|------------------------------------------------|
| 1.           | For injury sustained | 50,000/-                                     | 2,50,000/-                                     |
| 2.           | Pain and Sufferings  | 50,000/-                                     | 50,000/-                                       |
| 3.           | Medical Bill         | 6,423.61/-                                   | 6,423/-                                        |
| 4.           | Attender Charges     | 5,000/-                                      | 20,000/-                                       |



C.M.A.No.717 of 2022

| <i>S.No.</i>       | <i>Various Heads</i>               | <i>Award by Tribunal<br/>(amount in Rs.)</i> | <i>Award by this court<br/>(amount in Rs.)</i>                                            |
|--------------------|------------------------------------|----------------------------------------------|-------------------------------------------------------------------------------------------|
| 5.                 | Extra Nourishment                  | 5,000/-                                      | 15,000/-                                                                                  |
| 6.                 | Damage to Cloths                   | 3,000/-                                      | 3,000/-                                                                                   |
| 7.                 | Loss of amenities/ Loss of comfort | 20,000/-                                     | 20,000/-                                                                                  |
| 8.                 | Transport Charges                  | 5,000/-                                      | 15,000/-                                                                                  |
| 9.                 | Loss of income                     | 51,000/-                                     | 54,000/-                                                                                  |
| Total compensation |                                    | 1,95,424/-                                   | 4,33,423/-<br>after 30% deduction<br>3,03,397/- <b>(rounded<br/>off to Rs.3,03,400/-)</b> |

In view of my finding on negligence 30% is deducted towards contributory negligence of the claimant and the enhanced amount is arrived at Rs.3,03,400/- along with 7.5% interest from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of copy of this Judgment.

16. It is submitted by the learned counsel for the appellant that award of the Claims Tribunal was satisfied and therefore a direction is issued to the third respondent/Insurance Company to deposit the balance amount along with 7.5% interest within a period of six (6) weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimant shall be entitled to withdraw the same.



*C.M.A.No.717 of 2022*

In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

13.06.2022

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No



*C.M.A.No.717 of 2022*

To

1. The Chief Judicial Magistrate,  
Motor Accidents Claims Tribunal,  
Coimbatore.

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



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*C.M.A.No.717 of 2022*

**N.MALA.J.,**

dsn

C.M.A.No.717 of 2022

13.06.2023