



C.M.A. No. 1615 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1615 of 2021

K.R. Gobi

... Appellant / Respondent

Vs.

S. Gobalakrishnan

... Respondent / Petitioner

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.08.2019 passed in M.C.O.P. No. 683 of 2014 on the file of the Special Subordinate Judge No.2, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr. T. Mohan Raju

For Respondent : Mr. S.P. Venkatesh



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the respondent in the claim petition challenging the award passed in M.C.O.P. No. 683 of 2014, dated 21.08.2019 on the file of the Special Subordinate Judge No.2, Motor Accident Claims Tribunal, Salem, whereby the Tribunal has fixed the liability on the appellant herein to pay compensation for a sum of Rs.6,16,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization to the claimant.

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

3. The respondent in this appeal is the claimant, who has sustained injuries in the accident which took place on 20.02.2014 at about 20 hours in Minaamballi bus stop near Iyengar Bakery on the Athur to Salem National Highway. The case of the claimant is that he was standing in front of the bakery and at that time a Maruti Omni Van bearing Registration No. TSI-4554, which belongs to the first respondent came in



rash and negligent manner and dashed on the claimant causing severe injuries to the claimant. A criminal case was also registered in Crime No. 100/2014 under section 279 and 337 of I.P.C. on the file of Karipatti Police Station against the driver of the omni van. For the injuries sustained, he filed a claim petition seeking compensation for a sum of R.10,00,000/-.

4. The respondent, who is the owner cum driver of the Maruti Omni Van bearing Registration No. TSI-4554 filed a counter and contested the claim on the ground that he has driven the Maruti Omni Van in moderate speed with due care and caution and the accident has taken place only due to negligence on the part of the claimant, who suddenly came in the wrong side and hit himself on the Maruti Omni Van, hence prays to dismiss the claim petition.

5. Before the Tribunal, the claimant examined himself as P.W.1 and the doctor, who assessed the disability of the claimant as P.W.2 and Exs. P.1 to P.10 were marked. On the side of the respondent, the owner cum driver has examined himself as R.W.1 and no exhibits were marked.



6. Based on the evidence placed on record, the Tribunal has held that the driver of the Maruti Omni Van has driven the vehicle in rash and negligent manner and responsible for the accident. The Tribunal in point No.2, has quantified and granted compensation for a sum of Rs.6,16,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the award, this appeal has been filed by the respondent.

8. The learned counsel for the appellant has submitted that the Tribunal has failed to properly appreciate the evidence of the R.W.1, which points out the negligence on the part of the claimant and the compensation awarded under the various heads is on the higher side, hence prays to set aside the award.

9. Per contra, the learned counsel appearing for the claimant submitted that based on the evidence placed on record and the disability sustained, the Tribunal has rightly held that the respondent owner cum



driver of the offending vehicle is the tortfeasor and awarded just compensation, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. Before the Tribunal, P.W.1, the claimant has stated that he was waiting near Iyengar bakery on the left hand side of the road and suddenly a Maruti Omni Van bearing Registration No. TSI-4554 belongs to the respondent came in rash and negligent manner, through wrong side and hit on the claimant. In the cross examination, the claimant has re-iterated the fact that he was waiting near the bakery and at that time a Maruti Omni Van came in the wrong side and hit on him.

12. The R.W.1, who is also the owner cum driver of the Maruti Omni Van stated that he drove the omni van with due care and caution and at that time, the claimant came in the wrong side, which resulted in accident. In the cross examination, he stated that the injured/ claimant has suddenly entered into the road and fell down before his omni van. He further stated



that the F.I.R. - Ex.P.1 was also registered against him. Except this oral evidence, respondent not able to produce any creditable evidence to show that he has not driven the vehicle in wrong side. In F.I.R., it is stated that the accident was taken place, while the car was running on the wrong side. This fact has not been denied by the respondent. Admittedly, the claimant is a by-stander and he has been knocked down by the driver of the omni van, who drove the car in wrong side. This fact alone is sufficient to hold that the omni van has been driven negligently on the wrong side of the road. This Court is of the view that the finding of the Tribunal is proper and the same does not requires any interference.

13. With regard to quantum of compensation, the Tribunal has awarded Rs.90,000/- under the head disability, Rs.1,00,000/- each under the heads pain and suffering and loss of amenities and Rs.50,000/- for future medical expenses. In this case, the claimant was examined by P.W.2, the Doctor, who assessed the disability of the claimant has stated that the claimant has suffered fracture on the Right Leg Tibia and due to which the movement of the knee is restricted and the claimant has undergone surgery for the fracture sustained by him at the time of occurrence. The P.W.2 has



also further stated that due to the fractures sustained, the claimant was not able to do any hard work, though the injuries healed. Based on the above evidence, the disability of 30% is accepted by the Tribunal and granted compensation of Rs.3,000/- per percentage of disability and awarded Rs.90,000/- under the head disability.

14. However, on perusing the evidence of P.W.2, he has not deposed any need of future treatment, hence, under this circumstance, the compensation of Rs.50,000/- awarded by the Tribunal under the head future medical expenses is not proper and the same is hereby rejected. This Court is of the view that, based on the injuries and fractures sustained by the claimant, the Tribunal has awarded Rs.1,00,000/- each under the heads pain and suffering and loss of amenities granted for the injuries sustained by the claimant is on the higher side and the same are hereby modified to Rs.75,000/- each under the heads pain and suffering and loss of amenities. Whereas the other heads are concerned, the Tribunal has awarded just compensation and this Court confirms the same.

15. 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.	30% Disability	90,000/-	90,000/-	Confirmed
2.	Pain and Suffering	1,00,000/-	75,000/-	Reduced
3.	Loss of Amenities	1,00,000/-	75,000/-	Reduced
4.	Medical expenses	2,34,163/-	2,34,163/-	Confirmed
5.	Future Medical expenses	50,000/-	---	Rejected
6.	Transportation Charges	10,000/-	10,000/-	Confirmed
7.	Extra Nourishment	20,000/-	20,000/-	Confirmed
8.	Attender Charges	10,000/-	10,000/-	Confirmed
9.	Damage to articles	1,000/-	1,000/-	Confirmed
	Total Compensation	6,15,163/-	5,15,163/-	Reduced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,15,163/- is hereby reduced to **Rs.5,15,163/- [Rupees Five Lakh Fifteen Thousand One Hundred and Sixty Three only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The appellant is directed to deposit the modified compensation amount awarded by this Court along



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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.683 of 2014 on the file of the Special Subordinate Judge No.2, Motor Accident Claims Tribunal, Salem. On such deposit, the claimant 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. There shall be no order as to costs in the present appeal.

16.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge No.2,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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