



C.M.A.No.1144 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1144 of 2020

K.Raja

...Appellant

Vs.

1. M/s. Success Re-Treding (India) Private Ltd.,
D.No.3/126, Omalur Main Road,
Vellakakalpatty, Karruppur Post,
Omalur Taluk, Salem District.

2. Oriental Insurance Company Limited,
No.59, Raja Street,
Gopichettipalayam, Erode District.
Namakkal Office Address,
Thuraiyur Main Road, Namakkal Town.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 24.09.2019 in M.C.O.P.No.328/2014 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Namakkal.

For Appellant : Mr.R.Nalliyappan

For Respondents : No Appearance, for R1
Mr.D.Bhaskaran, for R2



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JUDGEMENT

Challenging the judgment and decree dated 24.09.2019 made in M.C.O.P.No.328/2014 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Namakkal, the claimant is before this Court.

2. The case of the appellant is that, on 23.11.2013 at about 10.30 a.m., when the appellant was riding the two wheeler bearing Regn.No.TN-30-AV-7239 on Chinnatirupathi to Jodukuzhi Road, near Palareddi Thottam curve, an Eicher van bearing Regn.No.TN-30-AY-3199 owned by the 1st respondent insured with the 2nd respondent, came in the opposite direction in a rash and negligent manner and dashed against the appellant's vehicle, due to which, the appellant sustained grievous injuries all over his body and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation of Rs.15,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.2,70,075/-. Aggrieved with the said order, the present appeal has been filed by the claimant seeking enhancement of the



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compensation fixed.

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3. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent, due to which, the appellant sustained grievous injuries and he is not able to perform his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Further, the Doctor also assessed the disability sustained by the appellant as 22.15%, however, the tribunal had taken only 15% permanent disability, which is not based on any material. Further, the compensation awarded under other heads are also on the lower side, which necessarily has to be enhanced. He further submitted that, though the tribunal arrived at a sum of Rs.4,15,500/- as compensation for the injuries sustained by the appellant, however, after deducting a sum of Rs.1,45,425/- towards the 35% negligence contributed on the part of the appellant, by not wearing at the time of accident and by not possessing valid driving licence, the tribunal awarded only a sum of Rs.2,70,075/- which is iper se illegal. Accordingly, he



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prayed for appropriate orders.

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4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. 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 quantum of compensation awarded by the Tribunal. It is claimed by the appellant that for not wearing helmet at the time of accident and for not possessing valid licence, fixing 35% negligence on the part of the appellant is not sustainable. It is not the case of the claimant that he was in possession of a valid driving licence. Had the claimant been in possession of a valid driving licence, he could have marked the same as a document. Though non-wearing of a helmet cannot be held to be



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a contributory negligence, but coupled with the fact that the claimant was not in possession of a valid driving licence, definitely, the finding of the Tribunal with regard to negligence cannot be held to be erroneous. Hence, this Court is not inclined to interfere with the award passed by the Tribunal with regard to negligence.

7. It is further claimed by the appellant that though the Doctor who examined the appellant assessed the disability at the rate of 22.15%, however, the Tribunal had taken the disability suffered by the appellant as 15% alone. In this regard, this Court perused the evidences and Ex.P2, Accident Register and Ex.P15, Disability certificate and the same reveals that the appellant suffered permanent disability of 22.15%. Further, considering the age of the appellant and the nature of work done by him, this Court is inclined to fix the disability suffered by the appellant at 20% and is inclined to adopt Rs.4,000/- per percentage of disability. Therefore, the amount under the head of permanent disability stands enhanced to a sum of Rs.80,000/- (20% x Rs.4,000/- = Rs.80,000/-). The compensation awarded under the other heads do not require



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any interference.

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8. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Permanent disability	45,000/-	80,000/- (enhanced)
Pain and sufferings	50,000/-	50,000/-
Extra nourishment	4,000/-	4,000/-
Loss of earnings	45,000/-	45,000/-
Transportation	8,000/-	8,000/-
Medical expenses	2,63,500/-	2,63,500/-
Total	4,15,500/-	4,50,500/-

9. Deducting the amount towards the contributory negligence at 35%, on the part of the appellant, the compensation payable to the claimant is fixed at Rs.2,92,825/-, which shall be paid by the insurance company.

10. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.2,70,075/-** to **Rs.2,92,825/-**. The 2nd respondent/Insurance Company is



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directed to deposit the said amount to the credit of M.A.C.T.O.P.No.328 of 2014 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 (4) weeks from the date of receipt of a 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 through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

29.11.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal (Chief Judicial Magistrate),
Namakkal.



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

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M.DHANDAPANI, J.

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