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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.No.1204 of 2021

Murugan

...Appellant

Versus

1.Jayaraman
2.Subramani
3.The National Insurance Co. Ltd.,
62-A, 1st Floor, Marudhamalai Main Road,
Vadavalli, Coimbatore – 641 041.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to allow the above Civil Miscellaneous Appeal and enhance the award in the judgment and decree dated 07.01.2020 made in M.A.C.T.O.P.No.1788 of 2018 on the file of the Motor Vehicle Accident Claims Tribunal/Special Subordinate Judge No.II, Salem.

For Appellant	:	Mr.C.Paraneedharan
For Respondent – 1	:	No Appearance
For Respondent – 2	:	No Appearance
For Respondent – 3	:	Mr.D.Bhaskaran

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/claimant seeking to enhance the compensation awarded by the learned Motor Vehicle Accident Claims Tribunal/Special Subordinate Judge No.II, Salem in M.A.C.T.O.P.No.1788 of 2018 vide judgment and decree dated 07.01.2020.

2. The brief facts of the case are as follows:

On 18.08.2017, at around 6.30 p.m, when the appellant/claimant was driving his two wheeler viz., TVS XL Super bearing Registration No.TN 30 BC 3945 near Tiruvakavundanur By-Pass Signal in Salem City Area from East to West direction, a private bus viz., Sri Balaji Bus Service – Ashok Leyland bearing Registration No.TN 22 CW 0217 coming behind the two wheeler of the appellant/claimant dashed his two wheeler, due to which, the left foot of the appellant/claimant was caught in the front wheel of the bus, thereby the accident occurred. In the said accident, the appellant/claimant had sustained grievous injuries and fracture in his left leg post traumatic raw areas left lower limb. So, immediately, the appellant/claimant was taken to Neuro Foundation Hospital, Salem for first aid treatment. Thereafter, he

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was admitted in Dharan Hospital, Seelanaickenpatty for further treatment where he took treatment as an in-patient from 19.08.2017 to 26.08.2017 and from 05.09.2017 to 07.09.2017. During the treatment period, the appellant/claimant had underwent plastic surgeries and split skin grafting. Hence, the appellant/claimant had filed a Claim Petition in M.C.O.P.No.1788 of 2018 against the first respondent (driver of the offending vehicle), second respondent (owner of the offending vehicle) and third respondent (insurer of the offending vehicle), claiming a sum of Rs.15,00,000/- as compensation for the grievous injuries sustained by him in the accident.

3. The third respondent/Insurance Company had filed its counter statement in M.C.O.P.No.1788 of 2018 denying all the averments made by the appellant/claimant in the Claim Petition.

4. Before the Tribunal, in order to prove the averments made in the claim petition, the appellant/claimant examined himself as P.W.1 and 11 documents were marked as Exs.P1 to P11. On the side of the respondents, no witnesses were examined and no documents were marked as exhibits. However, one document was marked as Court exhibit.

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5. On an appreciation of the oral and documentary evidence produced before it, the Tribunal had arrived at a conclusion that the accident had occurred due to the negligence of the appellant/claimant as well as the first respondent who drove the offending vehicle. Hence, the Tribunal had fixed 20% contributory negligence on the appellant/claimant and 80% contributory negligence on the first respondent. Further, it had held that being the insurer of the offending vehicle, the third respondent/Insurance Company is liable to pay 80% of the compensation alone and the remaining 20% of the compensation has to be borne by the appellant/claimant since the accident had occurred due to his 20% contributory negligence. By arriving at such a conclusion, the Tribunal had partly allowed the claim petition in M.C.O.P.No.1788 of 2018 and awarded a sum of Rs.2,08,394/- as compensation to the appellant/claimant. The Tribunal had directed the third respondent/Insurance Company to pay the 80% of total compensation i.e., Rs.1,66,715/- to the appellant/claimant and it also made it clear that the remaining 20% of the total compensation i.e., Rs.41,679/- has to be borne by the appellant/claimant. The break-up details of the compensation awarded by the Tribunal are hereinbelow:

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S.No.	Heads	Amount Awarded by the Tribunal
1	Permanent Disability (10% x Rs.3,000/-)	Rs. 30,000/-
2	Pain and Sufferings	Rs. 20,000/-
3	Loss of Livelihood	Rs. 20,000/-
4	Medical Expenses	Rs. 49,394/-
5	Loss of Income during Treatment Period and Rest Period (Rs.8,000/- x 6)	Rs. 48,000/-
6	Transport Expenses	Rs. 10,000/-
7	Nourishment Charges	Rs. 20,000/-
8	Attender Charges	Rs. 10,000/-
9	Damages for Clothes	Rs. 1,000/-
Total		Rs.2,08,394/-

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred this appeal before this Court.

7. The learned counsel for the appellant/claimant submitted that after analyzing the exhibits viz., Ex.P1 (First Information Report) & Ex.P8 (Final Report) marked on the side of the appellant/claimant, the Tribunal came to the conclusion that the accident had occurred due to the first respondent who drove the bus in a rash and negligent manner. While so, the Tribunal ought to have fixed 100% negligence on the first respondent. However,

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without doing so, the Tribunal had fixed 20% contributory negligence on the appellant/claimant for the only reason that he was not having a valid driving license at the time of accident. When 100% negligence is on the part of the first respondent, the Tribunal ought not to have looked into the aspect that whether the appellant/claimant was having a valid driving license at the time of accident.

7.1. Further, the learned counsel submitted that at the time of accident, the appellant/claimant was 27 years old. The appellant/claimant was working as a Mason and earning Rs.12,000/- as monthly income. Due to the accident, the appellant/claimant had sustained grievous injuries and fracture in his left leg post traumatic raw area left lower limb. After the accident, the appellant/claimant took medical treatment as in-patient in the Hospital for 11 days and during the treatment period, he had underwent plastic surgeries and spilt skin grafting. In the Disability Certificate issued by the Medical Board, it has been clearly stated that due to the accident, the appellant/claimant is suffered from 10% Permanent Disability. Before the accident, the appellant/claimant was hail and healthy, however, after the accident, he is not so. Since the appellant/claimant had sustained severe crush injury in his leg, he could not move anywhere without the help of

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others and he lost his earning power. However, without considering all these aspects, the Tribunal had awarded only Rs.30,000/- towards Permanent Disability and Rs.48,000/- towards Loss of Income during Treatment Period and Rest Period.

7.2. While awarding compensation towards Permanent Disability, the Tribunal had determined only Rs.3,000/- for 1% disability and similarly, while awarding compensation towards Loss of Income during Treatment Period and Rest Period, it had assessed Rs.8,000/- as monthly income of the appellant/claimant. The amounts awarded by the Tribunal under the heads viz., Permanent Disability and Loss of Income during Treatment Period and Rest Period are not just and reasonable. Therefore, the learned counsel prayed this Court to enhance the amount for 1% disability as Rs.5,000/- and also, to assess the monthly income of the appellant/claimant as Rs.12,000/-.

8. *Per Contra*, the learned counsel appearing for the third respondent/Insurance Company submitted that in the present case, the Tribunal had rightly fixed 20% contributory negligence on the appellant/claimant since he was not having a valid driving license at the time of accident. Moreover, the appellant/claimant was not wearing the

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helmet at the time of accident. Hence, the Tribunal had rightly fixed 20% liability on the appellant/claimant.

8.1. As far as quantum of compensation of compensation is concerned, as assessed by the Medical Board, the Tribunal took the disability percentage of the appellant/claimant as 10%. However, considering the request made by the learned counsel for the appellant/claimant, the learned counsel for the third respondent/Insurance Company suggested this Court to enhance the amount fixed for 1% disability as Rs.4,000/-.

8.2. The learned counsel further submitted that the amount awarded by the Tribunal towards all other heads are just and reasonable and hence, the same need not to be enhanced.

9. Heard the learned counsel for the appellant/claimant and the learned counsel appearing for the third respondent/Insurance Company.

10. From a careful perusal of the records placed before this Court, it is crystal clear that the accident had occurred only due to the first

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respondent who drove the bus in a rash and negligent manner and hit the two wheeler of the appellant/claimant. Initially, in paragraph no.6 of the findings of the Tribunal, it has been clearly stated that the accident had occurred due to the rash and negligent driving of the first respondent (driver of the bus). However, while concluding the paragraph no.6, the Tribunal held that the accident had occurred due to the negligence of the appellant/claimant as well as the first respondent (driver of the bus) and it fixed the contributory negligence on the appellant/claimant and the first respondent in the ratio 20:80. The Tribunal had fixed 20% contributory negligence on the appellant/claimant for the only reason that he was not having a valid driving license at the time of accident. Further, on the basis of the percentage of contributory negligence, the Tribunal had fixed only 80% liability on the third respondent/Insurance Company (insurer of the offending vehicle) and it had fixed the remaining 20% liability on the appellant/claimant.

11. As rightly stated by the learned counsel for the appellant/claimant that when 100% negligence is on the part of the first respondent (driver of the bus), the Tribunal ought not to have fixed 20% contributory negligence on the shoulder of the injured appellant/claimant.

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12. I do not find any merit in the findings of the Tribunal with regard to the fixation of 20% contributory negligence and 20% liability on the appellant/claimant. Hence, this Court is inclined to set aside such finding of the Tribunal.

13. So far as quantum of compensation is concerned, the Tribunal took the disability of the appellant/claimant as 10% and awarded Rs.30,000/- towards Permanent Disability by determining a sum of Rs.3,000/- for 1% disability. Further, the Tribunal awarded Rs.48,000/- towards Loss of Income during Treatment Period and Rest Period by determining a sum of Rs.8,000/- as monthly income for 6 months. However, the learned counsel for the appellant/claimant submitted that the amounts awarded by the Tribunal towards 'Permanent Disability' and 'Loss of Income during Treatment Period and Rest Period' are on the lower side. Hence, he prayed this Court to enhance the amount fixed for 1% disability and also, to enhance the assessment of monthly income of the appellant/claimant.

14. Considering the submissions made by the learned counsel for the appellant/claimant for enhancement of compensation awarded by the

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Tribunal towards 'Permanent Disability' and 'Loss of Income during Treatment Period and Rest Period', the amount for 1% disability is enhanced as Rs.4,000/- and the monthly income of the appellant/claimant is assessed as Rs.12,000/-. Hence, a sum of Rs.30,000/- awarded towards 'Permanent Disability' is enhanced to Rs.40,000/- (10% x Rs.4,000/-) and a sum of Rs.48,000/- awarded towards 'Loss of Income during Treatment Period and Rest Period' is enhanced to Rs.72,000/-. The amount awarded by the Tribunal towards other heads are just and reasonable and hence, the same are not enhanced or reduced. The break-up details of the enhanced compensation is as follows:

S.No.	**Heads**	**Amount Awarded by the Tribunal**
1	Permanent Disability (10% x Rs.4,000/-)	Rs. 40,000/-
2	Pain and Sufferings	Rs. 20,000/-
3	Loss of Livelihood	Rs. 20,000/-
4	Medical Expenses	Rs. 49,394/-
5	Loss of Income during Treatment Period and Rest Period (Rs.12,000/- x 6)	Rs. 72,000/-
6	Transport Expenses	Rs. 10,000/-
7	Nourishment Charges	Rs. 20,000/-
8	Attender Charges	Rs. 10,000/-
9	Damages for Clothes	Rs. 1,000/-
	Total	Rs.2,42,394/-

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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the findings of the Tribunal with regard to fixation of 20% contributory negligence and 20% liability on the appellant/claimant is set aside. A sum of Rs.2,08,394/- awarded by the Tribunal in M.C.O.P.No.1788 of 2018 is enhanced to Rs.2,42,394/- (Rupees Two Lakhs Forty Two Thousand Three Hundred and Ninety Four only). The third respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.2,42,394/-, after deducting the amount(s), if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of M.C.O.P.No.1788 of 2018, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the compensation amount directly to the bank account of the claimant in M.C.O.P.No.1788 of 2018, through RTGS, within a period of three weeks thereafter. No costs.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

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KRISHNAN RAMASAMY, J.

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