



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.977 of 2022

Manikandan

...Appellant

Vs.

1.Arun

2.Tamilarasan

3.The United India Insurance Company Limited,
104-A, Ranga Building, Peramanur Main Road,
Near Four Roads, Salem 636 007.

4.Prakash

5.Selvaraj

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.12.2021 in M.C.O.P.No.1345 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

For Appellant : Mr.C.Paraneedharan

For Respondents : M/s.I.Malar for R3

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 10% contributory negligence on the part of the appellant and for



enhancement of compensation granted by the Tribunal in the award dated 10.12.2021 made in M.C.O.P.No.1345 of 2018 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

2. The appellant is the claimant in M.C.O.P.No.1345 of 2018 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.01.2018.

3. According to the appellant, on the date of accident i.e., on 22.01.2018, while he was traveling as a pillion rider in the motorcycle bearing registration No.TN 54 F 9086, the rider of the motorcycle in a rash and negligent manner dashed against the motorcycle bearing registration No.TN 30 Q 1865, which was coming on the opposite direction and caused the accident; that the above accident was reported to Kaaripatty Police Station and a case in Crime No.21 of 2018 was registered against the rider of the motorcycle bearing registration TN 54 F 9086 for the offence under Sections 279 and 337 of IPC; that due to the accident, the appellant suffered grievous injuries and he was entitled to a compensation of Rs.15 lakhs.



4. The respondents 1 to 3 are the rider, owner and insurer of the motorcycle bearing registration No.TN 54 F 9086 respectively; the respondents 4 and 5 are the rider and owner of the motorcycle bearing registration No.TN 30 @ 1865 respectively. The respondents 1, 2 and 4 remained ex-parte before the Tribunal.

5. The third respondent/Insurance Company filed counter statement, denying the averments made in the claim petition and stated that the accident was not due to the rash and negligent riding of the rider of the motorcycle bearing registration No.TN 54 F 9086, since the appellant did not wear the helmet at the time of accident and fell down on his own from the motorcycle and he was not entitled for any compensation.

6. The fifth respondent filed counter statement, denying the averments made in the claim petition and stated that the rider of the motorcycle bearing registration No.TN 54 F 9086 was riding the motorcycle in a rash and negligent manner, in which the appellant was a pillion rider and his two wheeler namely TN 30 Q 1865 is not responsible for the accident.

7. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Arun was examined as P.W.2 and marked 18 documents as Exs.P1 to P18.

The respondents did not let in any oral and documentary evidence.



8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing registration No.TN 54 F 9086 belonging to the second respondent, fixed 90% negligence on the part of the rider of the motorcycle and 10% negligence on the part of the appellant for not wearing helmet respectively, awarded a sum of Rs.3,49,982/- as compensation to the appellant and directed the 3rd respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.3,14,984/- i.e. 90% of the award amount as compensation to the appellant.

9.The appellant has come out with the present appeal challenging the portion of the award fixing 10% contributory negligence on the part of the deceased as well as for enhancement of compensation.

10. The learned counsel for the appellant submitted that the Tribunal ought not to have fixed 10% contributory negligence on the appellant merely because he did not wear the helmet at the time of accident. The learned counsel further submitted that the appellant suffered multiple grievous injuries and fractures and in such circumstances, the compensation awarded under the head of pain and suffering is meagre. The learned counsel further submitted that the



Tribunal failed to award any amount towards future medical expenses and the compensation awarded under all other heads are also meagre and prayed for enhancement of compensation.

11. Per contra, the learned counsel for the third respondent/ Insurance Company submitted that the Tribunal has awarded just compensation as per the law laid down by the Hon'ble Apex Court as well as this Court and hence, there is no necessity to interfere with the award passed by the Tribunal. Hence, he prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the third respondent/Insurance Company and perused all the materials available on record.

13. This Court, on perusal of the pleadings and the judgment of the Tribunal, finds that the Tribunal has awarded compensation under the following heads in the following manner:

<i>S.No</i>	<i>Description</i>	Amount awarded by Tribunal (Rs)
1.	Loss of Permanent Disability (28% x Rs.5,000/-)	1,40,000
2.	Pain and suffering	20,000
3.	Loss of amenities	20,000
4.	Medical expenses	1,12,982
5.	Loss of income (Rs.8,000/- X 2 months)	16,000



<i>S.No</i>	<i>Description</i>	Amount awarded by Tribunal (Rs)
6.	Transportation charges	15,000
7.	Extra nourishment	15,000
8.	Attendant charges	10,000
9.	Damage to clothes	1,000
	Total	Rs.3,49,982/-

14. Though the learned counsel for the appellant has stated that the compensation under the head pain and suffering and loss of amenities are meagre, he was unable to justify the claim for enhancement. It is also the admitted case that the compensation under the head medical expenses was awarded as per the bills produced by the appellant and hence, the same also cannot be faulted with. There is no necessity for enhancing the compensation awarded under the other heads. Admittedly, the appellant has suffered 28% disability and the Tribunal had rightly awarded Rs.5,000/- per percentage of disability and awarded Rs.1,40,000/- towards loss of permanent disability.

15. This Court also finds that the Tribunal found on the basis of the evidence that the appellant did not wear a helmet at the time of accident. In view of the said fact, the Tribunal was justified in fixing 10% contributory negligence on the appellant. Therefore, for the above reasons, this Court is of the view that the award of the Tribunal deserves to be confirmed in all aspects.



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16. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,14,984/- awarded by the Tribunal as compensation to the appellant along with interest and costs is confirmed. The third respondent /Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

12.07.2023

Index: Yes/No
Internet: Yes/No
vkr

To

- 1.The Motor Accident Claims Tribunal /
Special Subordinate Judge No.II, Salem.
- 2.The Section Officer
VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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