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C.M.A.No.1967 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1967 of 2018

Ramar

.. Appellant

Versus

1.P.Vignesh Kumar

2.United India Insurance Company Limited
Katpadi Road
Vellore

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal (Subordinate Judge) Vaniyambadi made in M.A.C.T.O.P.No.48 of 2013 dated 15.07.2016.

For Appellant	: M/s.Terry Chella Raja
For Respondents	: Insufficient Address for R1 Mr.S.Arunkumar for R2

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accidents Claims Tribunal (Subordinate Judge) Vaniyambadi made in M.A.C.T.O.P.No.48 of 2013 dated 15.07.2016.



C.M.A.No.1967 of 2018

WEB COPY

2.The appellant herein is the injured/claimant seeking to challenge the award passed by the Tribunal in M.A.C.T.O.P.No.48 of 2013 on the ground of quantum and negligence.

3. The first respondent is the owner of the offending vehicle, the second respondent is the Insurance Company. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The factum of the accident and the manner of the accident is not in dispute.

4. During the trial before the Tribunal, the Claim Petitioner examined himself as PW1. Ex.P1 to P15 were marked. Ex.P1 is the FIR, Ex.P2 is the wound certificate, Ex.P8 is the Medical Bills and Ex.P10 is the disability certificate of the injured. The Tribunal on consideration of both oral and documentary evidences came to conclusion that the accident has taken place due to the carelessness of the appellant/claim petitioner, accordingly, fixed the negligence liability on the head of the appellant/claim petitioner at 50%. Considering the disability certificate, the Tribunal fixed the permanent disability at 63% and granted the compensation as tabled below:



C.M.A.No.1967 of 2018

<i>Calculation</i>	<i>Rs.</i>
Loss of future earning	Rs.5,29,200/-
Partial loss of earning	Rs.30,000/-
Transport expenses	Rs.30,000/-
Pain and suffering	Rs.5,000/-
Loss of amenities	Rs.10,000/-
Medical expenses	Rs.1,956/-
Total – 50% towards contributory negligence	6,06,156 – 50%
Net total	3,03,078/-

5. After hearing the counsel for the 2nd respondent Insurance Company and also taking note of the plea raised by the appellant/claim petitioner, this Court is of the considered view that contributory negligence of 30% is sufficient to be put on the head of the appellant/claim petitioner. Accordingly, the 50% of the contributory negligence put on the head by the Tribunal is reduced at 30%. Hence, the award amount is enhanced as (i.e., 6,06,156 – 1,81,846 (30%) = 4,24,310) after taking note of the contributory negligence.

6. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above and the contributory negligence is fixed at the ratio of 70:30 among the insurance company and the appellant/claimant. **Accordingly, the**



C.M.A.No.1967 of 2018

compensation awarded is enhanced from Rs.3,03,078/- to Rs.4,24,310/-.

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The rate of interest awarded by the Tribunal remains in tact. No Costs.

Consequently, connected miscellaneous petition is closed, if any.

(ii) the second respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) On such deposit being made, the claimant is permitted to withdraw his share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

27.06.2023

Internet : Yes/No

Speaking Order/Non-Speaking Order

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C.M.A.No.1967 of 2018

To
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The Presiding Officer,
Motor Accidents Claims Tribunal
(Subordinate Judge)
Vaniyambadi

A.A.NAKKIRAN, J.



WEB COPY



C.M.A.No.1967 of 2018

dhk

C.M.A.No.1967 of 2018

27.06.2023