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C.M.A.No.2669 & 2993 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.Nos.2669 & 2993 of 2021
& C.M.P.No.15260 of 2021

M/s. United India Insurance
Company Limited, 99-100,
South Car Street, Chidambaram,
Cuddalore District.

...Appellant in
CMA.No.2669 of
2021 & R2 in
CMA.No.2993 of
2021

Vs.

1.Senthilkumar

...R1 in CMA.No.
2669 of 2021 &
Appellant in CMA
No.2993 of 2021

2.Vijay

...R2 in CMA.No.
2669 of 2021 &
R1 in CMA.No.
2993 of 2021

Appeals under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement passed in M.C.O.P.No.163 of 2017 dated 10.11.2020 on the file of the Motor Accident Claim Tribunal (Subordinate Judge), Jayankondam.



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C.M.A.No.2669 & 2993 of



For Claimant : Mr.T.Gobinath
For Insurance Company : Mr.J.Chandran
For Driver of the Vehicle: No appearance

COMMON JUDGMENT

The Insurance Company and the claimant have filed separate appeals challenging the award passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Jayamkondan in M.C.O.P.No.163 of 2017 dated 10.11.2020.

2. The Insurance Company filed CMA.No.2669 of 2021 challenging the negligence fixed on the owner of the vehicle. The claimant filed CMA.No.2993 of 2021 seeking to enhance the compensation awarded by the Tribunal below.

3. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

4. The facts leading to filing of the claim petition are as follows :

When the claimant was riding his two wheeler bearing registration



No. TN-46-E-8523 from Jayamkondam to Kumbakonam Main Road on 02.03.2015, near Aanaikudam Asaithambi iron shop at about 8.30 p.m., Mahendra Tractor and Tailer which was carrying the sugar cane load, came in the opposite direction in a high speed and hit against the two wheeler, which resulted in causing severe injuries to the claimant. Thereafter, the claimant was taken to the Government Hospital, Kumbakonam and later, he was admitted in Vinodhagan Memorial Private Hospital, Thanjavur as an inpatient for more than 15 days. Contending that he sustained 75% permanent disability, the claimant came forward with the petition seeking compensation of a sum of Rs. 5,00,000/-

5. A criminal case was registered against the claimant in Criminal No. 41 of 2015 on the file of the T.Palur Police Station under Sections 279 and 337 of the Indian Penal Code. The respondent No.1 is the owner of the Tractor and the second respondent is the insurer of the tractor. The owner of the tractor has not contested and remained ex-parte. The insurer contested the claim, on the ground that the accident took place due to the negligent driving of the claimant and that the criminal case was investigated and a final report was filed stating that the claimant was the



tort-feasor. The insurer also contended that while the driver, who was riding the tractor attached with the trailer carrying sugar cane, saw the claimant riding his two wheeler in a negligent manner from the opposite direction. Immediately, the tractor was stopped. However, the claimant was unable to stop his two wheeler and hit against the tractor and sustained injuries.

6. Before the Tribunal, on the side of the claimant, PW1 and PW2 were examined and Ex.P1 to Ex.20 were marked. On the side of the insurer, RW1 to RW3 were marked and Ex.R1 to Ex.R6 were marked.

7. The Tribunal framed three points for consideration. The Tribunal in Point No. 1 & 2 held that both the driver of the tractor and the rider of the two wheeler were negligent in causing the accident. In Point No. 3, the Tribunal awarded a sum of Rs.4,27,026/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization.

8. The learned counsel for the insurance company submits that there is ample evidence placed on record before the Tribunal, that claimant



himself was riding the two wheeler in a negligent manner, came in the middle of the road and hit against the trailer, even though the tractor was stopped to avoid the accident. However, the Tribunal held that the driver of the Tractor was also responsible for causing the accident without any reason to substantiate its finding.

9. Per contra, the learned counsel for the claimant submits that even though there is final report filed by the police against the claimant alleging that he is a tort-feasor, the claimant separately filed a private complaint before the Judicial Magistrate-I, Jayamkondam against the driver of the tractor in STC.No. 1111 of 2015 on the ground that the driver of the tractor was responsible for the accident. According to him, without proper investigation, the final report has been filed against the claimant and the evidence placed on record reveals that the driver of the tractor alone was responsible for the accident. He prays to set aside the finding as to the contributory negligence fixed against him to the extent of 50%.

10. This Court has carefully considered the submissions on either side and perused the records.



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11. Before the tribunal, the claimant examined himself as PW1 and stated that he was riding his two wheeler from south to north direction with due care and caution. Whereas the tractor was driven in a negligent manner and it suddenly entered into the middle of the road, which resulted in the accident. He has to admitted in cross examination that, police have registered F.I.R. against him, after investigation final report was also filed against him. He further admitted that the width of road is wide enough to allow two heavy vehicles to ply easily. The accident was taken place at night time. He denied the suggestion that he was under influence of alcohol at the time of accident. The F.I.R is registered based on the complaint lodged by the owner of the tractor, against the claimant herein. It is also stated that the claimant came in wrong direction and hit on the Tractor.

12. The insurance company relied on the evidence of the Police officials, who conducted the investigation and filed a final report against the claimant. The Tribunal held that the accident had taken place in the middle of the road and that the two wheeler hit against the right side tyre of the trailer, which was running in the middle of the road. If the claimant had



been in the left hand side of the road, he would not have met with an accident. Before the Tribunal, the motor vehicle inspector's report as well as criminal records were produced. The evidence of P.W.1 shows that, the road in which the accident had taken place is wide road enough to allow two heavy vehicles ply easily. The evidence placed on record also shows that the accident had taken place in the middle of the road. Even though the driver of tractor was not examined, the manner in which the accident taken place has been considered by the Tribunal and has held the rider of the two wheeler equally contributed to the accident. This Court doesnot find any infirmity in the same.

13. Similarly, there is no evidence to show that the tractor was plied with due precautions while carrying the sugarcane load. The Tribunal further held that driver of the tractor was also negligent and was equally responsible for the accident. Since, the accident had taken place in the middle of road. This Court is of the view that the finding of the Tribunal is proper and that there is no infirmity in the reasoning given by the Tribunal. Accordingly, the contributory negligence and negligence fixed on the injured, driver and tractor respectively, is proper and requires no



interference of this Court.

14. With regard to quantum, the Tribunal refused to accept the disability of 40%, assessed by the PW2. Ex.P5 and P6, wound certificate and discharge summary states that the claimant sustained multiple fractures including disfigurement of his face. This Court is of the view that the percentage of disability fixed by PW2 is reasonable and the same is to be accepted. Accordingly, by following the Judgment of this Court in the case of *M.Chinnathambi vs. S.Deepa, National Insurance Co. Ltd.*, (reported in 2020 (1) TNMAC 617 (Mad)), the claimant is entitled for compensation, per percentage Rs. 4,000/-. Accordingly, compensation under the head disability is awarded as follows: “40 x Rs. 4000= Rs. 1,60,000/-”

15. The Tribunal, while awarding compensation, granted Rs.50,000/- under the head “disability” and Rs.20,000/- under the head, loss of earning capacity. Since, this Court has awarded compensation under the head “disability” by following the percentage method, the compensation awarded under this head is modified to the extent stated in supra.

16. The Tribunal held that claimant had undergone treatment as



an impatient from 03.03.2015 to 09.03.2015 at Thanjavur Vinothagan Memorial Hospital and entitled to two months income under the head “loss of income” during the treatment period. However, it has not awarded the attendant charges and this Court is inclined to award a sum of Rs.5000/- towards attendant charges. The Transport expenses are modified to Rs. 10,000/-. Considering the injuries, this Court is of the view that compensation towards loss of amenities has to be awarded and accordingly Rs. 20,000/- is awarded. As for all the compensation awarded under other heads are hereby confirmed.

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Amount Awarded by Tribunal (Rs.)</i>	<i>Amount Awarded by the Court (Rs.)</i>	<i>Award confirmed or enhanced or reduced</i>
1.	Loss of earning	24,000/-	24,000/-	Confirmed
2.	Transportation Expenses	5,000/-	10,000/-	Enhanced
3.	Nutrition Charges	2,000/-	2,000/-	Confirmed
4.	Loss of earning Capacity	20,000/-	20,000/-	Confirmed
5.	Damage to Articles	5,000/-	5,000/-	Confirmed
6.	Medical Expenses	2,91,026/-	2,91,026/-	Confirmed
7.	Disability	50,000/-	1,60,000/-	Enhanced



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S.No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
8.	Pain and suffering	30,000/-	30,000/-	Confirmed
9.	Attendant charges	---	5000/-	Granted
10.	Loss of Amenities	---	20,000/-	Granted
	Total Compensation	4,27,026	5,67,026/-	Enhanced

18. In the result, the appeal filed by Insurance Company in C.M.A. No. 2669 of 2021 stands dismissed and the appeal filed by claimant in C.M.A. No. 2993 of 2021 is partly allowed. The insurance company is directed to deposit the balance amount along with interest at the rate of 7.5% per annum as enhanced in this judgment to the credit of the claim petition before the tribunal below forthwith and the claimant is entitled to withdraw the same. No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2023

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



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C.M.A.No.2669 & 2993 of



K.RAJASEKAR. J

ns1

To

1. Motor Accidents Claims Tribunal cum Subordinate Judge,
Jayankondam
2. The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.2993 & 2669 of 2021

12.12.2023