



C.M.A.No.3098 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

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

C.M.A.No.3098 of 2019

Settu

...Appellant

Vs.

Rajalakshmi (Died)

1. The Divisional Manager,
The Bajaj Alliance General Insurance Co. Ltd.,
No.25/26, Prince Towers, Nungambakkam,
Chennai.

2. Murugaiyan

3. Dhanachezhiyan @ Thangarasu

...Respondents

(R2 & R3 are added as LRs of the deceased Rajalakshmi. Since R2 & R3 remained exparte before the tribunal, their presence may be dispensed with.)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment and Decree dated 03.01.2019 made in M.A.C.T.O.P.No.45 of 2017 on the file of the Motor Accidents Claims Tribunal, Court of the Special Sub Court, Tiruvannamalai.



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For Appellant : M/s.A.Subadra

For Respondents : Mr.J.Michael Visuvasam, for R1
R2 & R3 – Exparte

JUDGEMENT

Challenging the judgment and decree dated 03.01.2019 made in M.A.C.T.O.P.No.45 of 2017 on the file of the Motor Accidents Claims Tribunal, Court of the Special Sub Court, Tiruvannamalai, the claimant has come up with this appeal.

2. The case of the appellant is that, on 08.05.2016 at about 07.00 p.m., when the appellant was riding his two wheeler bearing Regn.No.TN-25-D-3652 on Tiruvannamalai to Chengam Main Road, the Tata Sumo bearing Regn.No.TN-32-F-0700, owned by the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the appellant, as a result of which, the appellant sustained grievous injuries all over the body and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation



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of Rs.50,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.26,59,428/-. Aggrieved with the said order, the present appeal has been filed by the claimant seeking enhancement of the compensation fixed.

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 offending vehicle, insured with the 1st respondent, due to which, the appellant sustained 90% functional disability 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 and for the said accident, an FIR also came to be registered as against the driver of the offending vehicle. Further, at the time of the accident, the appellant was aged about 42 years and was working as an Agriculturist and was earning about Rs.25,000/- per month. However, the tribunal had taken the monthly income of the appellant as Rs.7,000/- only, despite the fact that the accident is of the year 2016, which is very meagre and as the appellant sustained 90% disability, he has to be taken care of till his life time, however, the Tribunal awarded only a



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sum of Rs.1,00,000/- under the head “Attender charges”, which has to be necessarily enhanced. Further, the compensation awarded under other heads are also on the lower side and the same requires to be reconsidered and a higher compensation ought to be awarded to the appellant. Accordingly, he prays for appropriate enhancement in favour of the appellant.

4. Per contra, the learned counsel appearing for the 1st 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 prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st 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 is with regard to the quantum of compensation and the negligence fixed by the Tribunal. It is claimed by the appellant that the accident is of the year 2016 and at the time of accident, the appellant was



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earning a sum of Rs.25,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.7,000/-. It has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Even it has been held by the Apex Court that the wages should be in line with the minimum wages fixed by the State. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.10,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.12,500/- and the appellant being aged about 42 years, as evidenced from the records, adopting the multiplier of 14 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in **(2009) 6 SCC 121**, and as the appellant suffered functional disability of 90%, the loss of income is arrived at $\text{Rs.12,500/-} \times 12 \times 14 \times 90\% = \text{Rs.18,90,000/-}$.



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7. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

8. The tribunal had fixed contributory negligence of 10% on the part of the appellant/claimant for not wearing Head gear at the time of accident. It is to be pointed out that mere non-wearing of helmet cannot be a ground to fix contributory negligence on the part of the claimant, as the contributory negligence is fixed in relation to the cause of accident. Non-wearing of helmet may be a negligent act on the part of the claimant, but definitely it is not an act contributing a part to the accident and, therefore, to that extent, fixing contributory negligence at 10% on the claimant for not wearing helmet is unreasonable and the same cannot sustained. Hence, this Court fixes the entire liability on the part of the 1st respondent/ insurance company.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Functional Disability (90%)	13,23,000/-	18,90,000/-
Pain and sufferings	1,00,000/-	1,00,000/-
Medical Expenses	12,41,920/-	12,41,920/-
Nursing Charges	1,50,000/-	1,50,000/-
Transportation expenses	10,000/-	10,000/-
Attender Charges	1,00,000/-	1,00,000/-
Damages of two wheelers	20,000/-	20,000/-
Extra Nourishment	10,000/-	10,000/-
Total	29,54,920/-	35,21,920/-

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.26,59,428/-** to **Rs.35,21,920/-**. The 1st respondent-Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.45 of 2017 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 six (6) weeks from the date of receipt of a



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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.

22.12.2023

skt

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

To

- 1.The Motor Accidents Claims Tribunal, Court of the Special Sub Court, Tiruvannamalai.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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