



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2583 of 2019

Sampathkumar Vadivel

... Appellant/petitioner

Vs.

1. Babu

2. Murugesan

3. The United India Insurance Company Limited,
Mettupalayam.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree made in M.C.O.P.No.20 of 2018, dated 18.12.2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kangeyam.

For Appellant : Mr.G.C.Nelson Britto

For R1 & R2 : Notice dispensed with

For R3 : Mr.C.Paranthaman



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C.M.A.No.2583 of 20



JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award passed in M.C.O.P.No.20 of 2018 on the file of the Motor Accidents Claims Tribunal / Subordinate Court at Kangeyam.

2. The appellant is the claimant who suffered injuries in the road traffic accident held on 12.12.2011 on Kangeyam to Coimbatore Road, near Agasthilingampalayam City Tyres Company. The first respondent herein is the driver of the offending vehicle, namely Maruti Omni Van, bearing registration No.TN 04 C 8657. The second respondent is the owner of the said Maruthi Omni Van and the third respondent herein is the insurer of the said vehicle.

3. The appellant has suffered the following injuries “*Head Injury Left distal radius communitied intraarticular fracture*”. The appellant claimed compensation of a sum of Rs.3,00,000/- along with interest to be awarded before the Tribunal.



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4. The appellant examined himself as P.W.1 and marked documents as Exs.P1 to P14. On the side of the respondents, the insurer of the Insurance Company was examined as R.W.1 and Exs.R1 and R2 were marked.

5. After full enquiry, the Tribunal has awarded a sum of Rs.2,13,750/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit, along with costs. The claimant having not been satisfied with the award amount, has filed this appeal seeking enhancement of compensation.

6. The learned counsel for the appellant/claimant submitted that the appellant was working as a lorry driver and lost his earning capacity due to the injuries sustained by him. The Tribunal has failed to consider the grant of loss of income and also without even proper evidence, the Tribunal imposed 25% of contributory negligence on the side of the appellant herein.

7. Per Contra, the learned counsel appearing for the third respondent/Insurance Company submitted that the Tribunal has properly appreciated the evidence produced and awarded maximum compensation and



there is no ground made out for enhancement. The Tribunal has held that the claimant has found to be under influence of alcohol at the time of accident.

The Government Hospital, Kangeyam has issued Accident Register and it contains the recoding of the report after that the claimant was found to be had liquor. Hence, he has been mulcted with contributory negligence of 25% of the compensation amount, and he prays to dismiss the appeal.

8. The main ground urged by the appellant is that, contributory negligence fixed by the Tribunal is not sustainable, since there is no evidence produced before the Tribunal in this regard. The Tribunal has mulcted the claimant with 25% of contributory negligence on the ground that the appellant was found to be 'under the influence of Alcohol' at the time of driving his two-wheeler and accepted the contention of the respondent.

9. In the counter filed before the Tribunal, the Insurance Company has alleged that the Government Hospital, Kangeyam has issued Accident Register immediately after the accident to the claimant and it has been recorded by the Doctor that the injured was under influence of Alcohol. After making this allegation while cross-examining the claimant/P.W.1, no



question relating to 'drunk and drive' by the claimant has been put to him.

Similarly, they have not produced any oral evidence on their side instead, they have only examined official from the Regional Transport Office to dispute the licence of the claimant. On a perusal of the records, it shows that the respondents have not produced Accident Register alleged to be issued by the Government Hospital, Kangeyam. The claimant has marked Ex.P7/Accident Register issued by the KMCH Hospital, Coimbatore in which, there is no mentioning about the consumption of Alcohol by the claimant. Further, Ex.P1/F.I.R. was registered only against the driver of the Maruthi Omni Van but he did not file any objection to the FIR and also not lodged a complaint against the claimant that due to his negligence the accident occurred. Further, the driver of the Maruthi Omni Van did not appear before the Tribunal to depose his evidence that only due to the negligent act of the appellant, the accident occurred. Similarly, there is no contra evidence produced by the respondents to show that the claimant has also contributed for the accident by his negligent act. The Tribunal, in point No.1 has held that the accident was occurred due to the negligent act of the Maruthi Omni Van driven by the first respondent's driver, after holding that the first respondent's driver is responsible for the accident, without any



reason and without any oral or documentary proof, the Tribunal has deducted 25% of the total compensation i.e., out of Rs.2,85,000/- the tribunal deducted Rs.71,250/- and awarded a sum of Rs.2,13,750/-

10. In such circumstances, this Court is of the view that fixation of contributory negligence against the appellant is not sustainable and finding that he has also contributed for the accident is liable to be set aside.

11. The learned counsel for the appellant/claimant submitted that with regard to loss of income, during the period of disablement, the Tribunal has not awarded any compensation. The Tribunal has granted a sum of Rs.5,000/- to the attender and has not granted any compensation towards temporary loss of income during the period of disablement to the appellant.

12. On a perusal of the Discharge Summary, EX.P8, shows that the appellant has undergone treatment as an in-patient for 8 days. Accordingly, I am of the view that the claimant is entitled for temporary loss of income for a period of one month. The appellant has not produced any evidence to show his monthly income. However, he has come forward to



show that he was having heavy motor vehicle driving licence to show that he was a driver at the time of accident and accordingly this Court fixed notional income of the injured at Rs.6,000/-. Since he has undergone treatment as an in-patient for 8 days, I am inclined to grant loss of income for the period of one month as Rs.6,000/-.

13. Accordingly, 25% deduction made by the Tribunal towards contributory negligence is set aside and a sum of Rs.71,250/- is added and also added the loss of income for a period of one month at Rs.6,000/-. The appellant is entitled a total compensation of a sum of Rs.2,91,000/- which is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	Rs.90,000/-	Rs.90,000/-	Confirmed
2.	Medical Bills	Rs.1,35,000/-	Rs.1,35,000/-	Confirmed
3.	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-	Confirmed
4.	Nutrition Charges	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Transport Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Future Medical Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
7.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total Compensation	Rs.2,85,000/-	----	----



	(Less) contributory negligence 25%	Rs.71,250/-	----	----
	Total Compensation [Awarded]	Rs.2,13,750/-	----	----
8.	(Add) - Deducted amount of Contributory negligence 25%	----	Rs.71,250/-	Granted
9.	(Add) - Loss of Income during the period of disablement	----	Rs.6,000/-	Granted
	Total Compensation [Awarded by this Court]	Rs.2,13,750/-	Rs.2,91,000/-	Enhanced by Rs.77,250/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.2,13,750/- is hereby enhanced to Rs.2,91,000/- [Rupees Two Lakhs Ninety One Thousand only] together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.20 of 2018, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kangeyam. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded by



this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant, as laid down by a Division Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others in C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561*. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

05.06.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kangeyam.

2.The Section Officer,
VR Section, High Court, Madras.



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C.M.A.No.2583 of 2019

K.RAJASEKAR,J.,

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C.M.A.No.2583 of 2019

05.06.2023