



C.M.A. No. 2667 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2667 of 2021

C. Ramasamy

... Appellant / Petitioner

Vs.

1. K. Gnanavel

2. United India Insurance Company Ltd.,
No.18/116, Sree Saravana Complex,
Mettupalayam Road,
Dr. Sankaran Road,
Coimbatore - 641034.

3. United India Insurance Company Ltd.,
Muthaiha Complex,
No.1170, Mettur Road,
Erode District - 638011.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 08.02.2021 made in M.C.O.P. No. 239 of 2018, on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

For Appellants : Mr. S.P. Yuaraj



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For R1 : No Appearance
For R2 : M/s. Sree Vidhya
For R3 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant challenging the contributory negligence fixed and for enhancement of compensation awarded in M.C.O.P. No. 239 of 2018, dated 08.02.2021 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 13.08.2016, at about 10:00AM, the claimant was riding a TVS XL bearing Registration No.TN-56-E-4288 on Thudupathi to Thingaloor road, while he reached near Annanagar Colony Sennapuram Pirivu, a Maruti Alto car bearing Registration No.TN-37-AB-2817, driven by its driver in a rash and negligent manner, dashed on the claimant's two wheeler, thereby causing grievous injuries. A criminal case was registered



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in Cr.No.396/2016 U/d.279, 337 of IPC against the driver of Maruti Alto car on the file of the Perundurai Police Station, Erode (Dt.). For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166 of the Motor Vehicles Act.

4. The third respondent - insurance company has filed a counter and contended that the negligence on the part of the claimant is responsible for the accident. According to them, rider has ridden the motor cycle without valid driving licence and travelled in the middle of the road along with two pillion riders without observing the traffic rules, invited the accident. The insurance company also disputed the age, income, occupation, injuries and disability sustained by the claimant.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.13 and Ex.C.1 - disability certificate of the claimant were marked. On the side of the respondent, no witnesses were examined and no witnesses were marked.



6. Based on the evidence placed on record, the Tribunal in point no.1, has fixed contributory negligence on the part of the claimant and the driver of the car in the ratio of 10:90. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.9,91,238/- along with interest @ 9% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimant.

7. Aggrieved over the award, the claimant has filed this appeal challenging the contributory negligence fixed and for enhancement of compensation. The respondent - insurance company has not filed any appeal challenging the liability fixed on them to pay compensation.

8. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly appreciated the evidence placed on record regarding the employment and monthly earnings of the claimant. The Tribunal has also fixed contributory negligence of 10% on the part of the claimant on the ground that non possession of valid driving licence at the



time of accident. The compensation awarded under other heads are also on the lower side, hence prays to enhance the monthly notional income of the claimant fixed by the Tribunal and award just compensation under various other heads.

9. Per contra, the learned counsel appearing for the respondent – insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the contributory negligence and notional income of the claimant and also awarded just compensation, hence prays to confirm the award of the Tribunal.

10. I have considered the submissions made on both sides and perused the materials available on record.

11. In the cross examination of P.W.1, he has deposed that he was having valid driving licence, but he has not come forward to produce the same. He admitted that his TVS XL motorcycle was not insured at the time of accident. The Tribunal has categorically held that the injurer himself has ridden the two wheeler without proper driving licence and without insuring



his motor cycle, hence the Tribunal has fixed the contributory negligence of 10% on the claimant and this Court is of the view that the finding of the Tribunal is proper and the same is hereby confirmed.

12. With regard to fixing of notional monthly income, the P.W.1 - claimant himself claimed that he is a manual worker and earning a monthly income for Rs.20,000/- per month, however to prove the same, the claimant has not adduced any oral or documentary evidences. Considering the age of the claimant and year of accident, the Tribunal has fixed the monthly notional income of Rs.10,000/- per month. However, this Court is of the view that the notional income fixed by the Tribunal is on the lower side, since the claimant is aged about 41 years and he was a manual worker, hence this Court is inclined to modify the same to Rs.12,000/- per month.

13. Ex.P.6 - Discharge summary shows that the claimant has sustained following injuries: Closed Femur Shaft Right side fracture open Grade III B Distal 1/3 Tibia Shaft fracture with skin and bone loss and Ex.C.1 - disability report issued by the Medical Board of the Erode Medical College Hospital shows that the claimant has sustained 30% Functional



Permanent Disability. Hence, the Tribunal considering the age, avocation and nature of injuries of the claimant has held that the claimant would have lost at least 25% of his earning capacity, therefore, awarded compensation by adopting multiplier method. This Court is of the view that the Tribunal has rightly appreciated the medical documents and Ex.C.1 - disability certificate and assessed the percentage of disability for assessing the loss of earning capacity as per the principle laid down in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***, hence this Court is inclined to confirm the 25% loss of earning capacity fixed by the Tribunal.

14. The Tribunal has rightly followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and fixed 25% as future prospectus and as per ***Sarla Verma and others Vs. Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '14' by considering the age of the claimant at the time of the accident. The Ex.P.11 - Aadhaar card of the claimant, shows that the claimant is aged about 41 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and



multiplier adopted by the Tribunal and hence, confirms the same.

Accordingly, the loss of earning capacity with modified notional income of

Rs.12,000/- per month is assessed as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Future prospects @ 25%	= Rs.36,000/-
Yearly income of the claimant	= Rs.1,80,000/-
Applicable Multiplier	= 14
Total compensation (Rs.1,80,000 x 14)	= Rs.25,20,000/-
Loss of earning capacity @ 25%	= Rs.6,30,000/-

15. Since, the compensation under the head loss of earning capacity, the compensation awarded by the Tribunal under the head loss of income during the treatment period is hereby cancelled. Whereas the quantum of compensation with regard to various other heads are concerned, the Tribunal has awarded a just compensation hence, this Court is inclined to confirm the same.

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

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Suffering	50,000/-	50,000/-	Confirmed
2.	Attender Charges	25,000/-	25,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
3.	Transportation expenses	15,000/-	15,000/-	Confirmed
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Loss of earning capacity @ 25% disability	5,25,000/-	6,30,000/-	Enhanced
6.	Medical expenses	4,56,376/-	4,56,376/-	Confirmed
7.	Loss of income during treatment period	20,000/-	---	Cancelled
	Total	11,01,376/-	11,86,376/-	
	Deducting Contributory negligence @ 10%	1,01,138/-	1,18,638/-	
	Total Compensation	9,91,238/-	10,67,738/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,91,238/- is hereby enhanced to **Rs.10,67,738/- [Rupees Ten Lakh Sixty Seven Thousand Seven Hundred and Thirty Eight only]**. The enhanced compensation of **Rs.76,500/-** shall be paid interest @ 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any and the other aspects in the award of the Tribunal are hereby confirmed. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a



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copy of this judgment to the credit of M.C.O.P. No.239 of 2018 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Erode. On such deposit, the appellant/ claimant is permitted to withdraw the award amount 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. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.12.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:



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1. The Special District Judge,
Motor Accident Claims Tribunal,
Erode.

2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

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