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C.M.A.No.2249 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2023

PRONOUNCED ON : 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2249 of 2014

Krishnan

...Petitioner / Appellant

Vs.

1. Mr.K. Purushothaman.

2. The Branch Manager,
National Insurance company Ltd.,
Branch Office,
No.163/1-B, I Floor,
Salem – Bhavani Main Road,
Sankagiri – 637 301 .

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.03.2012 made in M.C.O.P.No.580 of 2009 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge, Krishnagiri.

For Appellant : Mr.M.Sriram

For Respondents : R1 - Ex-parte before Tribunal
Mr.J.Chandran for R2



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the claimant in M.C.O.P.No.580 of 2009, aggrieved over the quantum of compensation awarded by the Motor Accident Claims Tribunal / Special Judge, Krishnagiri, wherein the Motor Accidents Claims Tribunal has awarded a sum of Rs.1,64,013/- as compensation for the injuries sustained by the claimant in the accident that took place on 18.11.2007.

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

3. On 18.11.2007, at about 9.30 p.m, the petitioner was travelling in a auto bearing Registration No.TN.07/B.6451 from Hosur to Chinna Elasagiri and when the auto was proceeding 'U' turn near Dharga Muthumariyamman Koil, a lorry bearing Registration No.TN.30/Y.8277 belonging to the first respondent came in the opposite direction in a rash and negligent manner and dashed against the auto and dragged the auto to a distance of 20 feet. Due to the impact, the driver of the auto as well as the petitioner sustained grievous injuries. A criminal case was also registered against the driver of the



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lorry under Sections 279, 338 and 304 (A) of I.P.C by the Hosur TIW Police. Hence, the petitioner claimed compensation for a sum of Rs.5,00,000/- under various heads.

4. The first respondent - lorry owner, remained ex-parte before the Tribunal. The second respondent is the Insurance Company countered that the accident was occurred only due to rash and negligent driving of the auto driver who had not driven the vehicle cautiously and suddenly entered into the highway from one side to other side, which resulted in the accident. Hence, the auto driver is responsible for the accident. The claimant has to prove his case for his claim under various heads.

5. Before the Tribunal, the claimant was examined as PW1 and Dr.Devendiran, who has issued the disability certificate for the claimant was examined as PW2 and the documents Exs.P1 to P8 were marked. On the side of the respondents, RW1-R.Kumar was examined and one document Ex.R1 / Final report was marked.



6. The Tribunal after considering the evidence placed on record had held that there is negligence on the part of both the auto driver and the lorry driver. Hence, the liability has been fixed on the auto driver as well as lorry driver equally. Therefore, the Tribunal has awarded a sum of Rs.1,64,013/- as compensation under various heads.

7. The learned counsel for the appellant / claimant would submit that without proper appreciation of the evidence placed on record, the Tribunal had wrongly held that the auto driver is also responsible for the accident which needs to be set aside and the quantum fixed by the Tribunal is also not in accordance with the norms followed by the Courts for fixing the compensation. Hence, the learned counsel for the appellant / claimant prays to enhance the same.

8. The learned counsel for the second respondent / Insurance Company submitted that based on the evidence placed on record and the fact that the accident had occurred while taking U-turn by the auto driver, the Tribunal had rightly held that the auto driver had also contributed to the accident and the contributory negligence on the part of auto driver was fixed



at 50%. Accordingly, the Tribunal had directed the second respondent / Insurance Company to pay 50% of the award amount of Rs.82,006.50/- to the appellant and the balance 50% of the award amount shall be borne by the appellant himself.

9. I have considered the rival submissions and perused the materials placed before this Court.

10. The Tribunal has only based on the recitals in the FIR concluded that the auto driver while driving the vehicle had not taken due care and caution and hence, fixed 50% liability on the appellant / claimant. It is also held that since the auto driver was taking U-turn in the highway, he must have taken additional care of looking on both sides and thereafter, he must have entered into the highway, especially when there is a bigger vehicle which was coming in the other direction. Whereas, in the cross-examination of PW1, no such suggestion was raised or any document to show the sketch or the plan or to show the manner in which the accident had occurred was produced before the Tribunal. The finding that the auto driver had taken U-turn without due care and caution and hence, the accident had happened



is on mere assumption and without any evidence placed on record. Hence, this Court is of the view that, the finding that the appellant / claimant had also contributed to the accident is not sustainable and the same is liable to be set aside.

11. Accordingly, the award denying the payment of compensation to the appellant / claimant to the extent of 50% on the ground that he had also contributed to the accident is set aside and the lorry driver is to be held responsible for the entire accident and as an insurer, the second respondent shall pay the compensation to the appellant / claimant.

12. Accordingly, the second respondent shall pay the compensation already decided by the Tribunal. As far as the disability is concerned, the Tribunal had considered the evidence of PW2-Doctor, who had deposed that the appellant / claimant was given femur inter locking nailing right and cylindrical cast application and PW2-Doctor assessed the petitioner's disability at 50%. The Tribunal had not accepted the assessment and had held that the appellant / claimant had not suffered any amputation and



hence, fixed the disability at 30% and awarded Rs.2,000/- per percentage of disability.

13. This Court finds that awarding Rs.2,000/- per percentage of disability for the accident occurred in the year 2007 is proper and the same does not require any modification.

14. Considering the nature of injuries, this Court is of the view that the meagre amount of Rs.20,000/- awarded by the Tribunal for Pain and Sufferings is hereby enhanced to Rs.30,000/- and the award for Loss of Amenities is hereby enhanced from Rs.10,000/- to Rs.20,000/-. The Tribunal has not awarded any amount with regard to Transportation and Hospital and hence, this Court is inclined to fix a compensation of Rs.10,000/- for Transportation and Hospital. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Temporary Disability	Rs.60,000/-	-	Confirmed
2.	Partial Loss of Income	Rs.27,000/-	-	Confirmed
3.	Hospital and Medical Bills	Rs.37,013/-	-	Confirmed
4.	Nutritious Food	Rs.5,000/-	-	Confirmed
5.	Attenders Expenses	Rs.5,000/-	-	Confirmed
6.	Pain and Sufferings	Rs.20,000/-	Rs.30,000/-	Enhanced
7.	Loss of Amenities	Rs.10,000/-	Rs.20,000/-	Enhanced
8.	Transportation and Hospital	-	Rs.10,000/-	Granted
	Total	Rs.1,64,013/-	Rs.1,94,013/-	Enhanced by Rs.30,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The apportionment of liability for the accident fixed on the claimant is hereby set aside and the compensation awarded by the Tribunal at Rs.1,64,013/- is hereby enhanced to Rs.1,94,013/- together with interest @ 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date



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of receipt of a copy of this judgment, to the credit of M.C.O.P.No.580 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Special Judge Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount now determined 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 the 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.

29.08.2023

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

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To

1. The Motor Accidents Claims Tribunal,
Additional Special Judge Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR, J.

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