



C.M.A.No.3547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.03.2023
Pronounced on	06.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

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Mohan Raj

...Appellant

Vs.

1.Iyyappan

2.Reliance General Insurance Ltd.,

Rep by its Branch Manager,

No.89, Vivyn Plaza, 1st floor,

100 ft road, Mydaliyarpet,

Puducherry.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 02.03.2021 made in M.AC.T.O.P.No.1184 of 2017 on the file of the Motor Accidents Claims Tribunal, Puducherry.



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For Appellant : M/s.R.Renuka Devi
for MR.R.Sreedhar
For R1 : No appearance
For R2 : Mrs.C.Bhuvana Sundari

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The claimant has before the Motor Accident Claims Tribunal pondicherry, in M.AC.T.O.P.No.1184 of 2017 is the appellant in this Civil Miscellaneous Appeal.

2. Aggrieved by the insufficiency of the compensation awarded by the Tribunal, he has brought forth the above said Civil Miscellaneous Appeal, stating that the Tribunal failed to take note of the nature of grievous injury sustained by him and also failed to take note of the disability assessed by the Medical Board, wrongly adopted the percentage method instead of adopting multiplier method and the salary of the appellant taken as Rs.25,000/- is very low in terms of income for a period of eight months.



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3.The appellant/claimant herein preferred a claim on the file of the Motor Accidents Claims Tribunal, puducherry by filing M.AC.T.O.P.No.1184 of 2017 praying for an award against the respondents for the injuries sustained by him in the accident took place on 26.09.2017 at about 9.30 p.m. The facts can be briefly stated thus:

On 26.09.2017 at about 9.30 p.m. The appellant/claimant was riding in a Yamaha Motor Cycle bearing Reg. No.TN-41-H-5466 near Venkata nagar, puducherry from North to South direction. At the time, the rider of the Unicorn motor cycle bearing Reg.No.PY-01-CJ-8346 came in the opposite direction from South to North in a rash and negligent manner at high speed and dashed against the appellant's motor cycle. Due to the sudden impact, the appellant/claimant was thrown away in which the appellant/claimant sustained grievous injury over his head, face and left leg and multiple injuries all over his body. Immediately the petitioner was taken to Government Hospital, Puducherry and for further treatment, he was taken to Apollo Hospital, Chennai. The injuries resulted in



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permanent disability and consequential loss of earning capacity. Prior to the accident, the appellant/claimant was earning not less than Rs.25,000/- per month.

Due to the injuries sustained in the accident and the resultant permanent disability, he lost his earning capacity totally. The 1st and 2nd respondents being the owner and insurer of the offending vehicle respectively as on the date of accident and hence, they were jointly and severally liable to pay compensation to the appellant/claimant.

4. Based on the above said contention, the appellant/claimant assessed the damages at Rs.50,00,000/- and prayed for an award against the respondents directing them to pay jointly and severally the above said sum with future interest at the rate of 12% per annum and costs from the date of claim till realization.

5. In order to prove his case, besides examining himself as P.W.1 the claimant examined one more witness as P.W.2 and relied on 13 documents marked as Exs.A1 to A.40.



6. The 2nd respondent filed a counter statement resisting the claim of the appellant/claimant contending that the place of accident is a busy road and therefore there is no possibility for the 1st respondent to ride the motor cycle in a high speed and dash against the appellant/claimant has stated in the affidavit. It is further stated that at the time of the alleged accident, the appellant/claimant was riding the vehicle without wearing helmet and without valid driving license. Therefore, the said accident was caused only due to the negligence of the appellant/claimant and therefore the respondents are not liable to pay any compensation to the appellant/claimant and the claim petition should be dismissed with cost. In support of their claim, no witness was examined and no document was marked.

7. After completion of recording evidence, the Tribunal heard the arguments advanced on either side, framed the necessary points for consideration regarding the negligence and quantum, scrutinized the records and appreciated the evidence, held that the rash and negligent riding of the motor cycle bearing Registration No.PY-01-CJ-8346 belonging to the 1st respondent, was the sole cause of the accident and that the 1st and 2nd respondents, as owner and insurer of the offending



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vehicle, were jointly and severally liable to pay the compensation to the appellant/claimant, assessed the damages at Rs.11,96,800/- and passed an award directing the respondents to pay the said amount along with an interest at the rate of 5.5% from the date of claim till realization and proportionate costs. Hence, challenging the order of the Tribunal, this appeal has been preferred at the instance of the appellant/claimant.

8.This Court heard the arguments advanced in this appeal on either side and paid its anxious consideration to the same.

9.It is a fact not in controversy that there occurred an accident on 26.09.2019 near Venkata nagar, puducherry; that the appellant/claimant was riding his motor cycle bearing Reg. No.TN 41-H-5466 and the two wheeler bearing Reg. No.PY 01 CJ 8346 was proceeding in the opposite direction dashed against the claimant vehicle and resulted in the said accident and the appellant/claimant sustained grievous injury. In order to prove the petition allegations on the negligence aspect, the appellant/claimant examined himself as P.W.1 and produced



Ex.P.1-copy of the FIR, EX.P.9- final report,Ex.P10 - a copy of the report of

Motor Vehicle Inspector. Considering the above said oral and documentary evidence, the Tribunal arrived at the conclusion that it was due to the fault of the two wheeler rider, the 1st respondent herein, the accident took place. No contra evidence was let in by the respondents to prove the manner of accident. So far as the negligence is concerned, this Court finds that deducting 15 percent for contributory negligence is appropriate since the deceased at the time of accident has driven the vehicle without wearing helmet. The Tribunal has properly appreciated the evidence in this regard and has come to the correct conclusion that the accident took place only due to the rash and negligent act of the 1st respondent. Hence, the 1st and 2nd respondents in their capacity of owner and insurer of the offending vehicle were liable to pay compensation to the appellant/claimant. Though in fact, the owner and the insurer of the above said offending vehicle have not chosen to file either an appeal or a cross objection challenging the award of the Tribunal either on the question of negligence or on the question of quantum of compensation, this Court thinks fit that the findings of the Tribunal on the question of negligence requires no interference. Under these, circumstances, the finding of the Tribunal regarding negligence and the liability of the respondents to pay



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compensation remains unchallenged and thus, the said finding has got to be confirmed without impediment whatsoever.

10.The challenge to the award of the Tribunal was also made on the quantum of compensation. According to the appellant/claimant the amount awarded by the Tribunal is low and the same has got to be substantially enhanced. According to learned counsel for the appellant, the Tribunal has awarded a sum of Rs.11,96,800/- alone as against the claim of Rs.50,00,000/-.

11.The learned counsel for the appellant/claimant contended that the appellant/claimant has undergone two surgeries in which the entire skull was removed and he is still having serious ailments and neurological disorders which lead him to take continuous medicines. In order to prove the nature of injuries and the resultant disability the appellant/claimant, besides examining himself as P.W.1, also relied upon the documents marked as Ex.P.40-Copy of Discharge Certificate issued by the Government Hospital, Puducherry, Ex.P.5 a Discharge Summary issued by Apollo Hospital, Chennai, Ex.P.9-copy of wound certificate, Ex.P.11-



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Medical bills, Ex.P.12 to assess the nature of injuries sustained by the appellant/claimant Ambulance receipt respectively.

12.The disability certificate is marked as Ex.C.1. According to Ex.C.1 it is certified that the appellant suffered a permanent disability of 32.2%. The Tribunal seems to have accepted the assessment of disability at 32.2% to be a correct assessment and awarded a sum of Rs.1,61,000/- for the above permanent disability. The learned counsel appearing for the appellant would contend that the learned Tribunal failed to take note of the fact that due to injuries sustained by the claimant his capability has been gradually reduced. Hence, the Tribunal ought to have adopted the multiplier method for computing the earning capacity of the claimant. The Tribunal referring to the decision case in ***Rajkumar vs. Ajaykumar and others*** reported in ***(2011) 1 SCC 343*** declined to apply the multiplier method for the disability suffered by the claimant. From the evidence of the claimant, the Tribunal has come to the conclusion that there is no loss of income suffered by the claimant after the accident and therefore, awarded a lumpsum amount of Rs.1,61,000/- for partial permanent disability which according to this Court is reasonable.



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13. The Tribunal has awarded a total compensation of Rs.14,08,000/- and in the said sum, the Tribunal has deducted 15% negligence on the part of the appellant for not wearing the helmet at the time of accident and awarded a sum of Rs.11,96,800/- with the following particulars:

1.Partial permanent disability	- Rs.1,61,000/-
2.Pain and sufferings	-Rs.1,00,000/-
3.Extra Nourishment	-Rs.25,000/-
4.Attender charges	-Rs.40,000/-
5.Transportation	-Rs.20,000/-
6.Loss of income	-Rs.2,00,000/-
7.Medical Expenses	-Rs.8,62,000/-

Total: Rs.14,08,000 -Rs.2,11,200/- =11,96,800/-

14.The learned counsel for the appellant/claimant, taking the Court through the above said details of assessment made by the Tribunal has contended that the Tribunal failed to award reasonable amount as compensation. If the nature of



injuries and the disability suffered by the appellant are taken into consideration,

one can definitely come to conclusion that the life span shall be shortened to some extent. In view of the injuries sustained by the claimant, this Court is of the view that apart from the compensation awarded by the Tribunal, some reasonable amount can be awarded to the claimant under the following heads:

1. Loss of expectation of life and
2. Future treatment.

15. For the above heads, a total sum of Rs.1,00,000/- is awarded. Accordingly, the award passed by the Tribunal is enhanced.

16. In view of the above said discussion, this Court come to the conclusion that the appellant has made out a clear case for enhancement of the compensation and that in the interest of justice requires enhancement of the compensation awarded by the Tribunal from Rs.11,96,800/- to Rs.12,96,800/-. Under the other heads, the compensation awarded by the Tribunal is confirmed.

17. In the result the civil miscellaneous appeal is partly allowed. The total compensation of Rs.11,96,800/- is awarded by the Tribunal is enhanced to Rs.12,96,800/- along with the interest at the rate of 7.5% per annum.



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18.The 2nd respondent/Insurance Company shall deposit enhanced compensation amount, as modified by this Court along with interest at the rate of 7.5 % per annum from the date of claim till the date of deposit, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this judgement. On such deposit being made, the appellant/claimant is permitted to withdraw the amount modified by this Court by filing appropriate application before the Tribunal.

19.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.12,96,800/- from Rs.11,96,800/- subject to the above said modification. In all other respects, the award of the Tribunal shall stand confirmed. There shall be no order as to payment of costs.

(D.K.K.,J.) (K.G.T.,J.)

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vsn

Internet:Yes/No

Speaking/Non-speaking order

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To:-

The Motor Accidents Claims Tribunal, Puducherry



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