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C.M.A. No. 2606 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2606 of 2021

Shanmugavel

... Appellant / Petitioner

Vs.

1. Correspondent,
RGR Matric school, NH-7
Namakkal Main road,
Pudhuchadram,
Namakkal Dt. 637018.

2. M/s. United India Insurance
Company Limited,
No.2, Puvaneshwari complex,
Dr. Sangaran road,
Namakkal Dt. 637001.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.03.2020 passed in M.C.O.P. No.207 of 2018 on the file of the Principal Subordinate Judge, Motor Accident Claims Tribunal, Namakkal.

For Appellant : Mr. C. Thangaraju
For R1 : No Appearance
For R2 : Mr. C. Paranthaman



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant challenging the Judgment passed in M.C.O.P. No.207 of 2018, dated 09.03.2020 on the file of the Principal Subordinate Judge, Motor Accident Claims Tribunal, Namakkal, wherein the Tribunal has held that the claimant herein has contributed to the accident to the extent of 50%.

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

3. The case of the claimant is that on 25.11.2016 at about 5:15PM, he was riding a two wheeler bearing Registration No.TN-28-J-6480 from Puthansanthai - Senthamangalam road, while he reached near Pottanam cross road, a private school bus bearing Registration No.TN-47-Q-6805, came behind the claimant in a rash and negligent manner, hit on the two wheeler of the claimant, which resulted in causing grievous injuries to the claimant. A criminal case was also registered against the owner of the bus in Cr.No.415/2016 u/s.279 and 337 of I.P.C. on the file of Senthamangalam Police Station. Due to the injuries sustained, the claimant has come forward



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with a claim petition seeking compensation for a sum of Rs.15,00,000/-.

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4. The first respondent, who is the owner of the bus bearing Registration No.TN-47-Q-6805 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and disputed the manner in which the accident has taken place and also contended that the accident was taken place due to the negligence of the claimant, who came in the middle of the road without observing the bus. The claimant was not having a valid driving licence and was not wearing helmet at the time of occurrence. The insurance company also relied on the Motor Vehicles Inspection report to support their case and also contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

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.14 were marked. On the side of the respondent, no witnesses were examined and Ex.R.1 - M.V.I. Report was marked.



6. Based on the evidence placed on record, the Tribunal has held that the claimant has also contributed to the negligence of 50%. The Tribunal has quantified and granted compensation for a sum of Rs.48,839/- along with interest @ 7.5% per annum from the date of filing of this petition till the date of realization.

7. Aggrieved over the liability fixed against the claimant and quantum of compensation awarded by the Tribunal, the claimant has approached this Court seeking modification of award.

8. The learned counsel appearing for the claimant has submitted that Tribunal has not properly appreciated the evidence placed on record, wrongly fixed contributory negligence of 50% on the part of the claimant and without giving any reason, reduced the disability sustained by the claimant as 10%, whereas P.W.2, the doctor, who issued disability certificate - Ex.P.14 has assessed the disability of the claimant as 20%. The Tribunal has also not considered the nature of injuries sustained and compensation awarded under various heads is on the lower side, hence prays to enhance the same.



9. Per contra, the learned counsel appearing for the respondent - insurance company has submitted that the Tribunal based on the evidence placed on record has rightly fixed contributory negligence of 50% on the part of the claimant and also awarded a just compensation, hence prays to confirm the same.

10. Heard submissions made on both sides and perused the materials placed on record:

11. In this case, the Tribunal has held that the claimant has also contributed to the negligence to the extent of 50% based on the oral evidence of P.W.1 and after appreciating the Motor Vehicle Inspection Report, which is marked as Ex.R.1. The case of the claimant is that the two wheeler was hit by the bus on the backside but the case of the respondent is that the claimant has suddenly entered middle of the road and hit on the bus and also disputed the case of the claimant that the bus has not hit the two wheeler on the backside. The award shows that, Tribunal has critically analysed the evidence of P.W.1 and held that, the contention of the respondent is more probable in view of the damages noted in the Motor Vehicles Inspection



Report of two wheeler and categorically held that claimant evidence shows that he has contributed to the accident. On perusal of the same, this Court also finds that the two wheeler has sustained damages only on its front side and no damages were noted on the back side of the two wheeler. Even though, it is disputed by the claimant that his two wheeler hit the bus by entering into road, damages showed that the contention of the respondent is probable than the evidence of P.W.1. However it hold that, claimant has contributed to the accident to the extent of 50%. This Court finds no infirmity regarding the finding of the Tribunal with respect to contributory negligence of 50% fixed on the part of the claimant and confirms the same.

12. The other contention raised by the learned counsel appearing for the claimant is with respect to the disability of 10% fixed by the Tribunal. On perusal of the evidence placed on record, more particularly the wound certificate issued by the Sri Nithi Hospital, which was marked as Ex.P.3 and the discharge summary, which is marked as Ex.P.6, shows that the claimant has sustained 5 injuries and out of which two are grievous in nature, i.e., fracture on left chest rib and on the right leg and by the disability certificate issued by the P.W.2, the doctor who assessed the disability of the



claimant as 20% permanent disability. On perusal of the award of the Tribunal, it is noted that the Tribunal has agreed with the percentage of disability assessed by the P.W.2, but while calculating the compensation, it has recorded as 10% disability and there is no reason given by the Tribunal for changing the percentage of disability in its award. Hence, this Court of the view that the disability assessed by the P.W.2, doctor is proper and that there may be clerical error on the part of the Tribunal while fixing the disability. This Court is inclined to modify the percentage of disability of 10% fixed by the Tribunal to 20% as per the disability certificate issued by the P.W.2, doctor.

13. The Tribunal in its award under the head disability, adopted percentage method and awarded Rs.3,000/- per percentage of disability but in *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016 onwards, hence, considering the date of accident, this Court is inclined to modify the same by adopting Rs.5,000/- per percentage of disability and award compensation for a sum of Rs.1,00,000/- (Rs.5,000/- x 20% disability).



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14. The Tribunal awarded Rs.10,000/- under the head pain and suffering, this Court is of the view that the same is on the lower side. Hence, the compensation under the head pain and suffering is modified to Rs.25,000/-. Whereas the other heads are concerned, the Tribunal has granted a just compensation and the same are hereby confirmed.

15. 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.	Loss of earning during the treatment period	22,500/-	22,500/-	Confirmed
2.	Pain and Suffering	10,000/-	25,000/-	Enhanced
3.	Disability	30,000/-	1,00,000/-	Enhanced
4.	Medical expenses	32,178/-	32,178/-	Confirmed
5.	Extra Nourishment	3,000/-	3,000/-	Confirmed
	Total	97,678/-	1,82,678/-	Enhanced
	Total Compensation after Deduction towards 50% Contributory negligence	48,839/-	91,339/-	Enhanced



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.48,839/- is hereby enhanced to **Rs.91,339/- [Rupees Ninety One Thousand Three Hundred and Thirty Nine only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. 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 copy of this judgment to the credit of M.C.O.P.No.207 of 2018 on the file of the Princial Subordinate Judge, Motor Accidents Claims Tribunal, Namakkal. 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. 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.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.



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