IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.3665 of 2014

Balakrishnan .. Appellant/Claimant

Vs.

1. Shankar

2. United India Insurance Company Ltd.,
Rep. By its Branch Manager,
AKM Tower, First Floor, 397-I,
Junction Main Road, Salem-636 004. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 14.03.2014 made in MCOP.No.812 of 2011 on the file of the Motor Accident Claim Tribunal, Sub Court, Sankari.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.S.Chandran-R2
R1 – Ex-parte

JUDGMENT

This appeal has been filed by the appellant/claimant to set aside the decree and judgment dated 14.03.2014 made in MCOP.No.812 of 2011 on the file of the Motor Accident Claim Tribunal, Sub Court, Sankari.

2. The brief facts of the case are as hereunder :-

On 31.08.2011 at about 03.15 pm. When the appellant riding TVS XL super bearing registration No.TN 30 E 0426 near Sivathapuram fine rubber industries in Salem to Elampillai Main Road, the driver of TATA Maxi cab bearing registration No.TN 29 AE 2721 drove it in a rash and negligent manner hit against the appellant vehicle. As a result of the accident, the appellant, aged about 38 years sustained injuries. Thereby, the appellant/claimant has filed a claim Petition before the Motor Accidents Claims Tribunal, Sankari under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.6,00,000/- against the owner of the vehicle and its insurer and the same was taken on file in MCOP. No.812 of 2014.

3. Before the Tribunal, during trial, in order to prove the case of the claimant, he has examined three witnesses viz., P.W.1 and P.W.2 and marked 12 documents viz., Exs.P1 to P12. On the side of the respondents, no witness was examined and no document was marked. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary

evidences, the Tribunal has awarded a sum of Rs.1,64,000/- as compensation to the claimant with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The Tribunal has fixed the liability of 20% as against the appellant.

4. Aggrieved by the said award dated 14.03.2014, the appellant/claimant has filed this appeal before this Court.

5.The learned counsel appearing for the appellant/claimant submitted that for non production of the driving license, the Tribunal fixed 20% of the liability against the appellant, which is not sustainable one. Though the appellant has possessed the driving license and the same was lost during fire accident, thereby, the appellant could not produce the same during trial. Without considering the same, the Tribunal fixed the liability as against the appellant and this Court may interfere with the said aspect.

6. The learned counsel further submitted that the appellant sustained grievous injuries and the Doctor has assessed the disability at 36% and however, the Tribunal, without considering the doctors report, has reduced

the disability at 30% and awarded the compensation towards grievous injuries, which is very meagre and the same can be modifyed by this Court. Further, the appellant is entitled to get pain and sufferings and the Tribunal has not awarded any amount for pain and sufferings. In view of the same, this Court may pass appropriate orders.

7. The learned counsel for the second respondent Insurance Company would submit that before the Tribunal, the appellant has not produced the driving license, for which, the Tribunal fixed 20% liability as against him, which cannot be interfered with. Further other heads awarded by the Tribunal is just and reasonable.

8.Heard the learned counsel for the appellant/claimant as well as the learned counsel for the respondent Insurance Company and also perused the materials available on record.

9. From the materials on record, it is seen that the appellant has not possessed the driving license at the relevant point of time and the same was not produced before the Tribunal. Thereby, this Court is not inclined to

interfere with regard to the liability fixing as against the appellant.

10. The Doctor has assessed the disability at 36% and the Tribunal has reduced the disability at 30% . The permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors. This Tribunal has fixed the permanent disability at 30%, which is perfectly in order and considering the age of the appellant, this Court decided to award Rs.3000/- for per percentage and the same is worked out to Rs.90,000/- (Rs.3000/-X 30%) and the appellant is entitled for pain and sufferings and this Court awarded a sum of Rs.25,000/-.

11. In respect of other heads awarded by the Tribunal is just and reasonable and the same are confirmed. The amount of compensation of Rs.1,31,200/- is enhanced to Rs.1,65,600/- under the following heads:-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
For grievous injuries	72,000/-	90,000/-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
		(30% X Rs.3000)
Loss of earning during treatment	13,500/-	13,500/-
Medical Bills	70,500/-	70,500/-
Extra nutrition	5,000/-	5,000/-
Transportation	3,000/-	3,000/-
Pain and sufferings	25,000/-	25,000/-
Total	1,64,000/-	**2,07,000/-**
After deducting 20% of the award amount	**1,31,200/-**	**1,65,600/-**

12. With the above modification, the order of the Tribunal in MACTOP. No.812 of 2011 dated 14.03.2014 is modified and this appeal is partly allowed.

13. The compensation amount of Rs.1,31,200/- is enhanced to Rs.1,65,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The respondent insurance company is directed to deposit the award amount as ordered by this Court with interest, after deducting the amount if any already deposited within a period of six

weeks from the date of receipt of a copy of this order and thereafter. On such deposit, the appellant/claimant is permitted to withdraw the same on making proper application before the Tribunal. No costs.

10.10.2023

Index : Yes / No
Speaking Order : Yes/ No

rli

To

The Motor Accident Claim Tribunal, Sub Court, Sankari.

M.DHANDAPANI.,J.

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C.M.A.No.3665 of 2014

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