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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.455 of 2021

S.Vibhu

... Appellant

Vs

1. Karuppusamy

2 M.Naveenkumar

3. The Branch Manager,
Reliance General Insurance Company Ltd.,
No.43/B, 2nd Floor, Sree Abirami Towers,
R.S.Puram, Coimbatore.

4. Latha Maheswari

5. The Branch Manager,
Oriental Insurance Company Ltd.,
Dhali Road, Udumalaipet.

... Respondents

Civil Miscellaneous Appeal filed under Article 173 of Motor Vehicles Act 1988, for enhancement of compensation in the Judgment and decree dated 20.03.2020 in MACTOP. No.359 of 2017 passed by the Motor Accidents Claims Tribunal/Subordinate Judge, Udumalpet.

For Appellant : Mr.S.Aravind for
M/s.D.R.Arunkumar

For Respondents : Mr.C.Bhuvanasundari R3

Mr.D.Bhaskaran R5

RR1, 2 4 – No appearance

**J U D G M E N T**

WEB COPY This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded by the Motor Accidents Claims Tribunal, Udumalpet in MACTOP. No.359 of 2017 dated 20.03.2020.

2. It is the case of the appellant/claimant that on 08.06.2017 at about 2.00 p.m., the appellant/claimant was riding the motor cycle bearing Registration No.TN 78 U 5314 along with one Rakesh and Naveen as pillion, at that time, a new Yamaha motor cycle driven by the first respondent along with Naveen kumar and Dhanaprakash as pillion riders in an opposite direction, in a rash and negligent manner, dashed against the appellant/claimant. Due to the accident, the appellant sustained multiple injuries all over his body. Thereafter, the appellant has filed a claim petition before the Tribunal against the respondents, claiming a sum of Rs.50,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined himself as P.W.1 and the Doctor (P.W.2) and marked as many as 20 documents viz., Exs.P1 to P20. On the side of the respondents, one witness was examined and one document was adduced.



4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the motor bike. Therefore, the Tribunal has awarded a sum of Rs.8,20,293/- as compensation payable by the third respondent to the claimant.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. Learned counsel for the appellant submitted that the Doctor, who treated the appellant, has assessed the disability at 72% whereas the Tribunal awarded a compensation for a sum of Rs.3000/- per percentage towards loss of disability, which is erroneous. The accident had happened in the year 2017, the appellant is entitled to get a sum of Rs.5000/- per percentage. Further the amount awarded towards pain and suffering is very meager. Hence, the learned counsel for the appellant prays for enhancement of compensation.



Insurance Company submitted that the respondent has denied all the averments made by the appellant in the claim petition and filed a counter to that effect. The learned counsel further submitted that the accident had occurred due to the rash and negligent driving of the rider cum owner of the two wheeler. The Tribunal has awarded a sum of Rs.8,20,293/- is highly excessive and there is no basis for awarding such compensation. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the respondents and also perused the available materials on record before this Court.

9. The appellant is the claimant. It is not disputed that the accident had occurred only due to the rash and negligent driving of the rider of the other motor cycle. On careful reading of the records, it is found that the Doctor, who treated the injured, assessed the disability at 72%. As rightly submitted by the learned counsel for the appellant that the Tribunal has awarded a sum of Rs.3000/- per percentage towards permanent disability. Admittedly, the accident had happened in the year 2017. Considering the injuries sustained by the appellant, this Court is inclined to fix a sum of



Rs.3,50,000/- (70% X Rs.5000/-) towards permanent disability. Regarding the pain and sufferings, the Tribunal has awarded a sum of Rs.50,000/- and the same is modified as Rs.75,000/- and a sum of Rs.10,000/- is awarded towards attender charges, which the appellant is entitled for.

10. The award amount of compensation is modified under the following heads :-

Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Pain and sufferings	50,000	75,000
2	Medical Bills	4,84,293	4,84,293
3	Loss of disability	2,16,000	3,50,000
4	Loss of consortium	50,000	50,000
5	Extra nourishment	10,000	10,000
6	Transportation	10,000	10,000
7	Attender charges		10,000
	Total	8,20,293/-	9,89,293/-

11. Insofar as the contributory negligence is concerned, the appellant had driven the motor cycle along with two pillion riders and therefore, the Tribunal has fixed 20% negligence on the appellant and deducted the amount of 20% from the compensation, which is just and reasonable and this Court does not warrant any interference in respect of the



contributory negligence. Further, the pay and recovery method ordered by the Tribunal is confirmed.

12. In the result, the compensation awarded by the Tribunal is modified as above and the appeal is allowed. However, there shall be no order as to costs.

13. The third respondent is directed to deposit the award amount, after deducting 20% towards contributory negligence, along with interest at 7.5% p.a., from the date of claim petition till date of deposit, less the amount, if any, already deposited, to the credit of the claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

12.12.2023

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Index : Yes/no

Internet : Yes/no

Speaking Order/Non speaking order



To
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The Motor Accidents Claims Tribunal/Subordinate Judge,
Udumalpet.



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M.DHANDAPANI.,J.

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