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CMA No. 1823 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1823 of 2022

Dhayanithi

... Appellant

Versus

1. K.T.S.Enterprises, (Ex-parte)
No. 1, G/A, Hari Mansion, J.P.Avenue,
Dr.Radhakrishnan Road,
Mylapore,
Chennai – 600 004.

2. United India Insurance Co. Ltd.,
Silingai Building,
Regional Office, Motor TP Hub,
No. 134, Greams Road,
Chennai – 600 006.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 4010 of 2017 dated 21.04.2022 on the file of the Motor Accidents Claims Tribunal in the III Court of Small Causes, Chennai.

For Appellant : Mr. R.Mohan Babu

For Respondents : Ms. R.Rathna Thara for R2.

No appearance for R1



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J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 4010 of 2017 dated 21.04.2022

2.The appellants had filed claim petition seeking compensation before the Tribunal stating that on 17.06.2017 at 15.30 hours, when the appellant was riding his motorcycle bearing Registration No. TN 07 AX 6305 in Bharathy Salai from West to East direction opposite to State Bank of India, a lorry bearing Registration No. TN 10 S 8977 came in the same direction in a rash and negligent manner hit the motorcycle of the appellant from behind and caused the accident, as a result of which, the appellant sustained grievous injuries and was admitted in the hospital.

3.The first respondent remained ex parte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the rash and negligent driving of the appellant; that the claim petition is bad



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for non-joinder of necessary parties; that the procedure prescribed under the Motor Vehicles Act has not been followed; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.

5. The appellant examined himself as PW.1 and marked Ex.P.1 to Ex.P.15. On the side of the second respondent, neither any witness has been examined nor any document has been marked. Disability certificate issued by the Regional Medical Board, Government Stanley Medical College Hospital, Chennai has been marked as Ex.C.1.

6. The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the driver of the lorry belonging to the first respondent as well as due to the appellant and fixed 90% negligence on the driver of the lorry and 10% contributory negligence on the appellant and awarded a compensation of Rs. 17,48,000/- to the appellant to be paid by the second respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.



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7.The learned counsel for the appellant submitted that due to the injuries suffered by the appellant, his leg was amputated. The Tribunal though had accepted the disability certificate and had correctly applied the multiplier method, had fixed a very meagre amount of Rs.10,000/- as monthly income. The appellant was examined before the Tribunal as PW1 and he had stated that he was working as a Air Conditioner mechanic. Even in the earliest version of the FIR alleged, the appellant had mentioned about his avocation. Hence, the learned counsel submitted that the Tribunal ought to have fixed higher notional income. Though the appellant has taken treatment as inpatient in the hospital for nearly 143 days, the Tribunal had erroneously mentioned the period of hospitalization as 117 days and had awarded meagre compensation towards attender charges and prayed for enhancement of the compensation. The learned counsel further submitted that the Tribunal ought not to have fixed 10% contributory negligence on the appellant since he had produced Ex.P.15 driving license to prove that he had valid driving license.

8.Though notice has been served, none has entered appearance on behalf of the first respondent.



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9. On the other hand, the learned counsel for the second respondent submitted that the driving license possessed by the appellant indicates that he was entitled to drive only motorcycle with 50 CC engine. However, he had ridden Hero Honda Splendor, which has 100 CC engine. Therefore, the Tribunal was right in fixing 10% contributory negligence on the appellant. Further, the compensation awarded by the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

10. The questions that arise for consideration in the instant appeal are:

- (i) Whether the Tribunal was right in fixing 10% contributory negligence on the appellant?
- (ii) Whether the compensation awarded by the Tribunal is just and reasonable?

11. On perusal of the records, this Court finds that admittedly, the appellant had driving license for riding a motorbike with 50CC engine, which is seen from Ex.P.15 and the same is also recorded by the Tribunal



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in its award. The Tribunal had rejected the said driving license on the ground that the date of validity is not visible from the copy produced by the appellant. Fixing of contributory negligence on the victim/deceased depends on the facts and circumstances of each case. Further, the Hon'ble Supreme Court in ***Dinesh Kumar, J. @ Dinesh, J. Vs. National Insurance Co. Ltd. & Others*** reported in ***2018 (1) TN MAC 34 (SC)*** had held that the failure to produce driving license would not by itself be a ground to fix contributory negligence on the victim. Therefore, in the instant case, this Court is of the view that merely because Ex.P.15 copy of the driving license was not clear regarding the validity period, contributory negligence ought not to have been fixed on the appellant. Therefore, the finding of the Tribunal as regards the fixing of contributory negligence is liable to be set aside and it is accordingly set aside.

12. As regards quantum of compensation, it is seen that the appellant was treated as in-patient in six spells. He had also undergone surgeries for the injuries suffered by him. His right leg was also amputated as could be seen from Ex.C.1. disability certificate. Considering the nature of injuries, period of treatment and the disability



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suffered by the appellant, the Tribunal was right in fixing the functional disability at 70%. It is seen that the appellant had deposed before the Tribunal that he was working as a Air Conditioner mechanic. However, the appellant had not produced any documentary evidence to prove the income earned by him. The accident is of the year 2017. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the appellant at Rs. 15,000/- per month. Since the appellant was aged 44 years at the time of the accident, he is entitled to 25% enhancement towards future prospects and the multiplier applicable is 14. Therefore, the loss of income would be Rs. 15,000/- + Rs. 3,750/- (25% of Rs. 15,000/-) = Rs. 18,750/- x 12 x 14 x 70/100 = Rs. 22,05,000/-. The compensation awarded under the head attender charges is meagre since he has been in hospital for 143 days and hence, the same is enhanced from Rs. 40,950/- to Rs. 75,000/-. The award under the other heads are just and the same are confirmed. Thus, the award of 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
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1.	Loss of earnings	14,70,000	22,05,000	Enhanced
2.	Attender charges	40,950	75,000	Enhanced
3.	Loss of amenities	50,000	50,000	Confirmed
4.	Pain and Sufferings	50,000	50,000	Confirmed
5.	Extra Nourishment & Transportation	15,000	15,000	Confirmed
6.	Damages to clothes	1,000	1,000	Confirmed
7.	Medical Bills	3,15,213	3,15,213	Confirmed
	Total	19,42,163	27,11,213	
	After deducting 10% contributory negligence	17,47,946 rounded off to 17,48,000	---	Set aside
	Net compensation		27,11,213/-	Enhanced by Rs.9,63,213/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,48,000/- is hereby enhanced to Rs.27,11,213/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of two (2) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any,



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already withdrawn. The appellant is directed to pay the necessary court fee if any on the enhanced award amount. No costs.

30.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Motor Accidents Claims Tribunal/III Court of Small Causes,
Chennai.

2.The Section Officer,
V.R. Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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