



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1956 of 2022

Govintharaj

... Appellant

Vs.

1.Suriya

2.The United India Insurance Company Ltd.,

Divisional Office, HUB, Ranga Building,

Peramanur Main Road, Permanur, Salem – 636 007.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.03.2022 in MCOP.No.358 of 2018 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge No.I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.C.Paranthaman for R2

No appearance for R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.358 of



2018, dated 04.03.2022, on the file of the Motor Accident Claims Tribunal
Special Subordinate Judge No.I, Salem.

2. The appellant is appellant in MCOP.No.358 of 2018 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge No.I, Salem. He filed the said Claim Petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.10.2017.

3. According to the appellant, on the date of accident i.e., on 22.10.2017 at about 04.00 p.m. while the deceased was travelling pillion in a two wheeler bearing Registration No.TN-54-L-1733 on the Kottachedu - Kupannur Road, near a curve, the rider of the above said two wheeler drove the same in a rash and negligent manner without observing the traffic rules, dashed against the wall which is in the extreme left side of the road. Due to the said impact, the appellant suffered grievous injuries. Therefore, he filed a claim petition claiming a sum of Rs.15,00,000/- as compensation.

4. The first respondent, rider of the two wheeler, remained *ex-parte* before the Tribunal.



5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the appellant who was the pillion rider was in a drunken mood, lost his balance, fell down from the motorcycle and invited the accident. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Arun was examined as P.W.2 ten documents were marked as Exs.P1 to P10. The second respondent/ Insurance Company examined Dr.Thamayandhi as R.W.1 and did not mark any documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the appellant sustained grievous injuries due to rash and negligent act of both the first respondent as well as appellant and fixed 90% negligence on the part of the first respondent and 10% negligence on the part of part of the appellant. Thus, directed the second respondent being the insurer of the vehicle to pay a sum of Rs.3,29,313/- being 90% of the award amount as compensation to the appellant.



8. The learned counsel for the appellant submitted that the quantum of compensation awarded by the Tribunal is meagre. The learned counsel further submitted that the Tribunal ought to have accepted the Ex.X2, disability certificate issued by the P.W.2 Doctor, who had assessed the percentage of the disability at 35% which is permanent. The Tribunal ought to have adopted multiplier method, but in any case ought not to have awarded the compensation on the basis of percentage method by reducing the percentage of the disability to 25%. The learned counsel further submitted that the appellant was working as a Mechanic at the time of the accident and the notional income fixed by the Tribunal at Rs.7,500/- per month for the accident that had taken place in the year 2017 is meagre. The learned counsel further submitted that the Tribunal erred in fixing 10% contributory negligence on the appellant who was a pillion rider, merely because he smelt of alcohol. The learned counsel also submitted that though there is no evidence to show that the said fact contributed to the accident, the Tribunal erred in fixing 10% contributory negligence on the appellant and prayed for allowing the appeal.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the appellant did not subject



himself for medical examination by the Medical Board. Hence, the Tribunal was right in reducing the percentage of disability at 25%, though the private Doctor had assessed the disability at 35%. The learned counsel further submitted that the finding of the Tribunal in fixing 10% contributory negligence on the appellant cannot be faulted. The award of compensation under the other heads are just and reasonable and there is no reason to interfere with the same. Hence, he prayed for dismissal of the appeal.

10. Though notice was served on the first respondent, none had entered appearance on his behalf before this Court.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.

12. From the materials on records, it is seen that on perusal of the injuries suffered by the appellant, the Tribunal had adopted percentage method for awarding compensation towards disability. Though the appellant had not subjected himself for medical examination before the Medical



Board, in the facts and circumstances of this case, this Court is of the view that the disability certificate issued by the private Doctor, marked as Ex.C1 can be accepted considering the nature of the injuries suffered by the appellant. The Tribunal had awarded a sum of Rs.5,000/- per disability which cannot be faulted. Therefore, the appellant is entitled for compensation under the head "Permanent Disability" at Rs.1,75,000/- (5,000 x 35). As regards to the notional income, it is seen that the Tribunal had taken a sum of Rs.7,500/- p.m as notional income of the appellant. Considering the fact that the appellant was working as a Mechanic and the accident was of the year 2017, this Court is of the view that it would be reasonable to fix the notional monthly income at Rs.10,000/-. Therefore, the award under the head "Loss of income" for the period of six months is enhanced from Rs.45,000/- to Rs.60,000/-

13. This Court is of the view that the finding of the Tribunal that the appellant had also contributed to the accident since he smelt of alcohol is erroneous. There is no evidence to show that the appellant was in a drunken state at the time of the accident. Further, there is no medical evidence to prove that the appellant was under the influence of alcohol at the time of the accident. In such circumstances, merely because the



appellant/ pillion rider was in a drunken state cannot be the basis for fixing contributory negligence on the part of the appellant. Hence, the finding of the Tribunal fixing 10% contributory negligence on the appellant is set aside. Therefore, this Court is of the view that the second respondent being the insurer of the offending vehicle is liable to pay the entire compensation to the appellant.

14. Thus, the compensation awarded by 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 or reduced
1.	Pain and suffering	40,000	40,000	confirmed
2.	Loss of income	45,000	60,000	enhanced
3.	Medical expenses	79,903	79,903	confirmed
4.	Transportation charges	15,000	15,000	confirmed
5.	Extra nourishment	15,000	15,000	confirmed
6.	Attendant charges	15,000	15,000	confirmed
7.	Damages to cloth	1,000	1,000	confirmed
8.	Loss of	30,000	30,000	confirmed



	amenities			
9.	Permanent disability	1,25,000	1,75,000	enhanced
	Total	3,65,903	4,30,903	Enhanced by Rs.65,000

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,65,903/- is hereby enhanced to Rs.4,30,903/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined 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. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

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To

WEB COPY

- 1.The Motor Accident Claims Tribunal /
Special Subordinate Judge No.I, Salem
- 2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



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SUNDER MOHAN,J.

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