



C.M.A.No.2049 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2049 of 2022

B.Mani

...Appellant

Vs.

1.V.Rama Chandra Rao

2.The New India Assurance Company Limited,

Motor Third Party Claim Cell,

No.232, NSC Bose Road, 6th Floor,

Chennai -1.

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.06.2022 in M.C.O.P.No.6918 of 2016 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge No.II, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : R1-No appearance

R2-Mr.C.Johnson



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JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 50% contributory negligence on the part of the appellant and for enhancement of compensation granted by the Tribunal in the award dated 24.06.2022 in M.C.O.P.No.6918 of 2016 on the file of the Motor Accident Claims Tribunal, Small Causes Court, Special Sub Judge No.II, Chennai.

2.The appellant filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.03.2016. According to the appellant, on the date of accident i.e., on 22.03.2016, at about 22.50 hours, while he was driving his auto bearing registration No.TN 09 AY 4174 on the mount to Poonamallee main road from East to West direction, by observing the traffic rules and regulations, all of a sudden, one pedestrian crossed the road abruptly and in order to avoid the pedestrian, he took a right turn and hit the center median, due to which, the auto capsized; that at that time, one car



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bearing registration No.AP 09 CS 6909 came in a rash and negligent manner and rammed on the capsized auto. In the accident, the appellant sustained grievous injuries and therefore, was entitled to a claim of Rs.20 lakhs.

3.The 1st respondent, owner of the car, remained exparte before the Tribunal.

4. The second respondent /Insurance Company filed counter statement denying the averments made by the appellant and stated that the accident occurred only due to the negligent driving of the auto by the appellant. At the time of accident, the appellant was under the influence of alcohol and drove the auto in a rash and negligent manner, as a result of which, he lost his control and hit the center median of the road; and that hence, the appellant alone is responsible for the accident. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.



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5. Before the Tribunal, the appellant examined himself as P.W.1 and marked twelve documents as Exs.P1 to P12. The second respondent/Insurance Company examined one Padmini, the Deputy Manager of the Insurance Company as R.W.1 and marked six documents as Exs.R1 to R6. The certificate issued by the Medical Board was marked as Ex.C1.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by both the appellant as well as the driver of the car belonging to the 1st respondent, fixed 50 : 50 contributory negligence on the part of the appellant as well as the driver of the car belonging to the 1st respondent respectively, awarded a sum of Rs.3,93,150/- as compensation to the appellant and directed the second respondent being insurer of the said car to pay a sum of Rs.1,97,000/- i.e., 50% of the award amount, as compensation to the appellant.



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7.The appellant has come out with the present appeal challenging the portion of the award fixing 50% contributory negligence on his part as well as for enhancement of compensation.

8.The learned counsel for the appellant submitted that the Tribunal ought not to have fixed 50% contributory negligence on the part of the claimant. even assuming that he was under the influence of alcohol at the time of accident. The evidence discloses that because a pedestrian crossed the road in a negligent manner, the appellant had to apply sudden brake and as a result of which, the appellant's auto got capsized and driver of the offending vehicle caused collision, causing injuries to him. In any case, the learned counsel submitted that the quantum of compensation awarded by the Tribunal is erroneous by applying percentage method. The Tribunal ought to have adopted multiplier method. Admittedly, the appellant was an auto driver and since he has suffered fracture in both hands, there is a functional disability. The accident is of the year 2016 and the Tribunal ought to have fixed notional income of the appellant at Rs.15,000/- per month instead of Rs.10,000/- per



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month. The Tribunal further has not awarded any amount towards loss of amenities inspite of the fact that the appellant has suffered multiple fractures.

9. Per contra, the learned counsel for the second respondent submitted that admittedly, the appellant was under the influence of alcohol and there is no evidence that he had applied sudden brake, since a pedestrian crossed the road and hence, the contributory negligence fixed by the Tribunal cannot be faulted. The learned counsel submitted that the appellant has not established that he has suffered functional disability and hence, the percentage method adopted by the Tribunal also cannot be faulted. Further, the compensation awarded by the Tribunal under the other heads including medical expenses are just and need not be interfered with.

10. This Court on perusal of the records and on hearing the submissions made by the learned counsel on either side, finds that the disability certificate issued by the Medical Board/Ex.C1 shows that the appellant was under the influence of alcohol. Further, Ex.R6/Accident



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Register copy also discloses that the appellant smelt of alcohol. Ex.R5/Rough Sketch prepared during the investigation by the Police confirms that the appellant drove the vehicle on the extreme right side of the road and crashed into the barricade and thereafter, turned left. There is no independent evidence to show that there was a pedestrian crossing the road. Only the appellant has stated so. Considering the fact that the appellant was under the influence of alcohol and the manner in which, he had ridden the auto as seen from the Rough Sketch/Ex.R5 and the fact that there is no independent evidence to probabalise the version of the appellant, this Court is of the view that the appellant also contributed to the accident. This Court also finds that the driver of the offending vehicle had followed the auto of the appellant very closely without following the safe distance norms. This Court finds that the contributory negligence fixed by the Tribunal at 50% on the appellant and 50% on the driver of the offending vehicle is just and in order.

11. As regards the quantum, this Court finds that Ex.C1/Disability Certificate issued by the Medical Board shows that percentage of the



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permanent disability fixed is 3%. Considering the nature of injuries namely fracture in the left hand and his avocation as an auto driver, this Court is of the view that the Tribunal ought to have applied multiplier method to determine the compensation. The finding of the Tribunal with regard to fixing of notional income at Rs.10,000/- per month cannot be faulted. Since the appellant was aged 51 years at the time of accident, he is entitled to 10% towards future prospects and the multiplier applicable is 11 and hence, the compensation under the head functional disability is modified as follows:
$$10,000 + 1000 (10\%) \times 12 \times 11 \times 3 / 100 = \text{Rs.}43,560/-$$
 Further this Court finds that the Tribunal has not awarded any compensation under the head of loss of amenities. In view of the multiple injuries sustained by the appellant and the treatment taken as in-patient in the private hospital from 22.03.2016 to 26.03.2016, 26.03.2016 to 09.04.2016 and 09.04.2016 to 02.05.2016, the appellant is entitled for a compensation of Rs.20,000/- towards loss of amenities. The amount of compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed.



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12.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimant. 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.	Disability	15,000	43,560	Enhanced
2.	Pain and sufferings	50,000	50,000	Confirmed
3.	Transportation	4,000	4,000	Confirmed
4.	Medical Expenses	2,70,950	2,70,950	Confirmed
5.	Extra nourishment	10,000	10,000	Confirmed
6.	Attender charges	13,200	13,200	Confirmed
7.	Loss of earnings	30,000	30,000	Confirmed
8.	Loss of amenities	-	20,000	Granted
	Total	3,93,150	4,41,710	



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	50% of the award amount	1,97,000	2,20,855 (Rounded off to Rs.2,21,000)	Enhanced by Rs.24,000/-
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13.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.3,93,150/- is hereby enhanced to Rs.4,41,710/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is entitled to Rs.2,21,000/- after deducting towards contributory negligence. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court i.e., Rs.2,21,000/- 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/claimant is permitted to withdraw the enhanced award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.



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Index: Yes/No

Internet: Yes/No

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To

- 1.The Motor Accident Claims Tribunal,
Small Causes Court, Special Sub Judge No.II, Chennai.
- 2.The Section Officer
VR Section, High Court of Madras.

SUNDER MOHAN,J.



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