



C.M.A.No.1234 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 14.12.2022	Pronounced on 09.01.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1234 of 2017

D.Premkumar,
S/o.Dhulasilingam,
No.2/140, Ambedkar Nagar,
Kovilanchery,
Chennai.

... Appellant

Vs.

1.R.Anburose,
No.380/268, Nellikuppam Road,
Melakottiyur, Vandaloor,
Chennai 48.
(R1 was set exparte in the trial Court)

2.ICICI Lombard General Insurance Co. Ltd.,
1st Floor, Arihant Plaza,
84/85, Waltax Road,
Parry's Corner,
Chennai 600 003.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.04.2016 made in MACT.OP.No.3700 of 2011 on the file of the VI Judge, Motor Accident Claims Tribunal (Small Causes Court), Chennai.



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For Appellant : Mr.C.Munusamy
For Respondents : Mr.K.Poomalai (for R2)

R1 - Exparte

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 21.04.2016 made in MCOP.No.3700 of 2011 on the file of the learned VI Judge, Motor Accident Claims Tribunal (Court of Small Causes), Chennai.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed the above Appeal, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 07.04.2011. The Tribunal has awarded a sum of Rs.46,000/- with interest at the rate of 7.5% per annum from the date of numbering of the MCOP Petition till the date of deposit and costs. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.



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4.During the trial, on the side of the claim Petitioner, PW1 and PW2 were examined, Ex.P1 to Ex.P.4 were marked and on the side of the Respondents, none was examined and no documents were marked.

5.The factum of the accident is admitted but the manner of the accident is disputed.

6.Heard the learned counsel for the claim Petitioner and the learned counsel for the Insurance Company.

7.According to the claim Petitioner on 07.04.2011 at 16.50 hours the claim Petitioner was riding a Motor Cycle bearing Reg. No.TN 22 L 7232 along the Madurapakkam Main Road from South to North direction with due care and diligence. When the motor cycle was nearing Sharma Nagar, a Tata ace bearing Reg. No. TN 21 L 2876 came from the opposite direction in a rash and negligent manner, without following the traffic rules and regulations and dashed against the Motor Cycle. Due to which the claim Petitioner sustained grievous injuries.



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8.The Insurance Company filed counter affidavit denying the manner of the accident. Before the Tribunal, the claim Petitioner/injured was examined as PW1 and PW2/Doctor, who had given Ex.P.4 disability Certificate was also examined. On the side of the Insurance Company none was examined, especially the driver of the Tata Ace vehicle, which is said to be an offending vehicle was not examined.

9.On perusal of evidence of PW1/injured claim Petitioner, it appears that PW1 had admitted that he had no driving license to drive his vehicle on the date of the accident. He also admitted that the vehicles were collided with each other, which is termed as "Head on collusion". Accordingly, the Tribunal has fixed the contributory negligence on the part of the driver of the Tata Ace Van and the claim Petitioner/injured at the ratio of 50:50 and also fixed total compensation at Rs.91,300/- and awarded a sum of Rs.46,000/- (50%) to the claim Petitioner as compensation.

10.After perusing the evidence of PW2 and also taking note of the fact that driver of the Tata Ace vehicle is not examined and from the admission



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made by PW1, I find that the manner of the accident indicates that at the time of the accident, claim Petitioner/injured is not having valid driving license and hence 10% contributory negligence is fixed on the claim Petitioner and also taken into note the fact that it is a head on collision, another 15% is fixed on the claim Petitioner. Accordingly, the contributory negligence is reassessed at ratio of 75 : 25.

11.On the point of quantum of compensation, PW2/Doctor has issued Ex.P.4/Disability Certificate stating that due to the injury the claim Petitioner suffered partial and permanent disability and fixed 30% for partial and permanent disability. After going through the discharge summary/Ex.P.1, issued by the Institute for Research and Rehabilitation Hand and Department of Plastic Surgery, Government Stanley Hospital, Chennai, it appears that extensor suturing and joint capsule repair, right EDC, ECRB, EID repair are done on the claim Petitioner and he was given Physiotherapy. Hence, disability of the claim Petitioner is fixed at 25% and the compensation is reassessed as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Pain and sufferings	25000



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<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
2	Transportation	10000
3	Extra nourishment	10000
4	Loss of income (6500 x 3)	19500
5	Attender charges	5000
6	Disability (25 x 3000/-)	75000
	Total	144500

Out of the above compensation amount, the claim Petitioner is entitled to a sum of Rs.1,08,375/- (Rupees one lakh eight thousand three hundred and seventy five only) $[144500 \times 75/100]$ with interest at the rate of 7.5% per annum from the date of numbering of this Petition till date of realisation.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award from Rs.46,000/- to Rs.1,08,375/- to the extent indicated above. No Costs.

(ii) the Insurance company is directed to deposit the enhanced award amount with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) The claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

09.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

sai

To
The VI Judge,
Court of Small Causes,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated:09.01.2023