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C.M.A.No.1240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1240 of 2022

Prabhakaran

... Appellant

vs.

1.Moorthi

2.The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.110, 2nd floor, J.N. Street,
Pondicherry.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount dated 17.12.2020 made in MACTOP.No.566 of 2017 on the file of the Additional Motor Accidents Claims Tribunal, the Presiding Officer, Additional Motor Accidents Claims Tribunal, Puducherry.

For Appellant : Mr.T.Ananthasekar
For R1 : No appearance
For R2 : Mr.R.Rathnathara

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C.M.A.No.1240 of 2022

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal is filed to enhance the amount in the award dated 17.12.2020 made in MACTOP.No.566 of 2017 on the file of the Additional Motor Accidents Claims Tribunal, the Presiding Officer, Additional Motor Accidents Claims Tribunal, Puducherry.

2.On 21.04.2017 at about 04.15 p.m. while the claimant was walking from South to North direction at the Maraimalai Adigal Salai in front of KVVJ Oil Center, Orleanpet, Pondicherry, the motor cycle belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the claimant causing him grievous injuries. According to the claimant he was aged about 30 years at the time of the accident and as a Tinker was earning a sum of Rs.20,000/- per month. The claimant therefore filed the claim petition claiming Rs.12,50,000/- as compensation for the injuries sustained by him in the accident.

3.The first respondent owner of the vehicle remained exparte. The



C.M.A.No.1240 of 2022

claim petition was contested by the second respondent/Insurance Company.

The second respondent denied all the allegations and averments made in the claim petition, apart from disputing the negligence, quantum and liability.

4.Before the Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P8 in support of his claim. On the side of the respondents the Doctor who issued the disability certificate was examined as RW1 and no documents were marked. The Disability Certificate was marked as Ex.C1.

5.The Claims Tribunal on an assessment of the entire evidence on record found that the claimant had contributed to the accident and apportioned the negligence at 35% on the claimants and 65% on the rider of the two wheeler. The Tribunal assessed the compensation at Rs.2,55,000/-, deducted Rs.89,250/- towards the contributory negligence of the deceased, awarded Rs.1,65,750/- @ 7.5% interest and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the award passed by the Tribunal, the claimant has preferred the above appeal challenging the



C.M.A.No.1240 of 2022

finding on negligence and also for enhancement of compensation.

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6.It is submitted by the learned counsel for the appellant that the finding of the Tribunal on the issue of the contributory negligence is erroneous and that the Tribunal erred in deducting 35% towards contributory negligence. The learned counsel further submitted that the Doctor who was examine as RW1 deposed that the claimant had suffered head injury and loss of hearing and therefore the assessment of compensation towards partial permanent disability was erroneous.

7.The learned counsel appearing for the respondents on the other hand submitted that the finding on negligence was justified and further the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

8.I have heard the learned counsel for the appellant and the learned counsel for the second respondent and have perused the materials on record.



C.M.A.No.1240 of 2022

9.It is seen that the Tribunal relied on the evidence of the claimant in cross examination wherein he stated "விபத்து நான் நடந்து ரோட்டை கடக்கும்போது நடந்ததா என்றால் சரிதான்", The Tribunal interpreted the said statement as if the claimant admitted his negligence and deducted 35% towards contributory negligence of the claimant. In my view, the interpretation of the Tribunal is erroneous. The claimant merely stated the fact that the accident occurred while he was crossing the road and never admitted his negligence. The Tribunal failed to note that in the absence of examination of the two wheeler rider, contributory negligence could not be imputed to the claimant. In my view the non-examination of the rider of the two wheeler is fatal to the case of the respondent. Therefore the finding of the Tribunal and the apportionment of negligence at 35% against the claimant is not sustainable. In my view, the order of Tribunal under other heads are just, fair and reasonable.

10.The learned counsel appearing for the appellant submitted that the claimant suffered loss of hearing and the same was also deposed by the Doctor, who was examined as RW1. The learned counsel therefore



C.M.A.No.1240 of 2022

submitted that considering the age of the claimant, the Tribunal ought to have awarded reasonable sum towards loss of amenities. I am of the view that the submission of the learned counsel is justified. The Doctor who had examined the petitioner had clearly deposed that the claimant suffered blood clotting and it would result in loss of hearing. In the light of the evidence of RW1, I am of the view that a sum of Rs.20,000/- may be awarded towards loss of amenities. In view of the above discussion, the award of the Tribunal is modified as follows: -

SI. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Partial Permanent Disability	Rs.1,05,000/-	Rs.1,05,000/-
2	Pain & Suffering	Rs. 70,000/-	Rs. 70,000/-
3	Extra nourishment	Rs. 10,000/-	Rs. 10,000/-
4	Attender Charges	Rs. 10,000/-	Rs. 10,000/-
5	Transportation Expenses	Rs. 5,000/-	Rs. 5,000/-
6	Medical Expenses	Rs. 15,000/-	Rs. 15,000/-
7	Loss of Income	Rs. 40,000/-	Rs. 40,000/-
8	Loss of Amenities	-	Rs. 20,000/-
TOTAL		Rs.2,55,000/-	Rs.2,75,000/-

11.The claimants shall be entitled for a sum of Rs.2,75,000/- along



C.M.A.No.1240 of 2022

with 7.5% interest. It is submitted by the learned counsel for the second respondent/Insurance company that the compensation awarded by the Tribunal along with the accrued interest and costs has already been deposited. In the light of the said submission, there shall be a direction to the second respondent/Insurance company to deposit the balance enhanced amount of Rs.20,000/- along with 7.5% interest, from the date of the claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall be entitled to withdraw the said amount by making proper application before the Tribunal.

12.In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

20.06.2023

Index : yes/no

Internet : yes/no

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To

1.The Additional Motor Accidents Claims Tribunal,
The Presiding Officer,

7/9



C.M.A.No.1240 of 2022

Additional Motor Accidents Claims Tribunal,
Puducherry.

WEB COPY

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

N.MALA, J.

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C.M.A.No.1240 of 2022



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C.M.A.No.1240 of 2022

20.06.2023