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C.M.A.No.4326 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2023

PRONOUNCED ON : 17.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.4326 of 2019

Selvam

... Appellant

vs.

1.Santhosh

2.The Oriental Insurance Co., Ltd.,
No.94, 3rd Floor, Jawaharlal Nehru Road,
100 FT Road, (Hotel Ambica Empire & above SBI),
Vadapalani, Chennai 600 026.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.1460 of 2018 dated 26.08.2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

For Appellants : Mr.N.Mohanasundaram
for M/s.Paraneedharan

For R1 : No Appearance

For R2 : Mr.P.S.Kothandaraman
for Mr.G.Anandam



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant-claimant against the impugned Judgment and Decree dated 26.08.2019 passed by the Motor Accident Claims Tribunal Chennai - Special Subordinate Judge No.II, Salem in M.C.O.P No.1460 of 2018 .

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,74,920/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant for the injuries suffered by him on account of the accident. Aggrieved of the same, the present Civil Miscellaneous Appeal has been filed by the appellant/claimant for enhancement of compensation.

3. As regards the facts, in this case, on 28.03.2018 at about 10.00 a.m. when the appellant/claimant was riding a two wheeler bearing Registration No.TN-54 E-0358 along Valasaiyur Four Road Kattur, a motorcycle bearing Registration.No.TN-29 BV-1578 belonging to the 1st respondent which was insured with the 2nd respondent, driven by the 1st respondent allegedly in a rash and negligent manner and came from the



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northern side and hit against the appellant. As a result of which, the appellant sustained grievous injuries. At the time of accident, the appellant was aged about 55 years and was working as a labourer in Dying Factory and was earning a sum of Rs.12,000/- per month. Due to the injuries sustained by the appellant in the accident, he has stated that he could not do his daily activities and his work as done before. Therefore, the appellant filed a claim petition under Section 166 Motor Vehicles Act r/w Rule 3 of the Tamil Nadu Motor Accident Claims Tribunal Rules, claiming a compensation of Rs.15,00,000/-.

4. The Tribunal upon hearing both sides and after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the first respondent. At the same time, the Tribunal has fixed 20% negligence on the part of the appellant on the ground that the appellant/claimant did not possess valid driving licence at the time of accident and directed the second respondent-Insurance Company, to pay a sum of Rs.1,74,920/- towards 80% of the award amount as compensation to the appellant.



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5. The learned counsel appearing for the appellant submitted that the Tribunal erred in fixing 20% contributory negligence on the part of the appellant and therefore deducted 20% of compensation amount. The learned counsel further argued that on account of the injuries sustained by the appellant/claimant, he finds it difficult to walk and do the normal work. Therefore, considering the injuries sustained in the leg, the amount awarded under the permanent disability may be enhanced. Due to the accident, the appellant/claimant had suffered compound Grade II comminuted fracture in both bones of right leg. For which, he was treated as an inpatient from 29.03.2018 to 05.04.2018 at Salem Suraksha Speciality Hospital and he had also undergone surgery.

6. The learned counsel for the second respondent contended that the appellant did not possess valid driving licence to ride two wheeler at the time of accident thereby he has contributed negligence to the extent of 20% and to strengthen the said argument, a reference was made to the judgment rendered by this Court in **National Insurance Company Limited Vs. Thangadurai and others**, 2018(2)TN MAC 168 , wherein it was held that as the appellant/claimant did not possess Driving Licence to ride two wheeler, 20% negligence was fixed on the claimant. In that



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case, the appellant/claimant was having driving licence to drive Light Motor Vehicles and Heavy Motor Vehicles and there was no endorsement with regard to two-wheeler. In this case, claimant/PW1 during his cross examination has stated that on the date of accident he did not possess Driving Licence at all. Therefore, the Tribunal has correctly fixed contributory negligence to the tune of 20% on the part of the appellant-claimant.

7. Heard the learned counsels for the appellant and the second respondent and also perused the material records.

8. From the materials available on record, it is seen that the Tribunal has held that the accident has occurred only due to rash and negligent riding by the first respondent. The appellant had sustained fracture in both bones of right leg and after surgery plating was done in the right knee. He has taken treatment as inpatient at Salem, Sureksha Specialty Hospital from 29.03.2018 to 05.04.2018. The petitioner was referred to the Medical Board by the Tribunal. The Medical Board vide Ex.C.1 Disability Certificate has determined the permanent disability as 15% .



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9. Considering the age, avocation and the injuries sustained by the petitioner, on account of accident, the Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering, Rs.5,000/- towards transportation and a sum of Rs.4,000/- towards attendant charges, which sums appear to be on the lower side. Therefore, the amount awarded under those heads are hereby enhanced to Rs.10,000/-, Rs.5,000/- and Rs.6,000/- respectively in addition to the amounts already awarded. In respect of other heads, the award of the Tribunal appears to be reasonable.

10. Considering the fact that the appellant/claimant had sustained fracture in both bones of right leg and considering the fact that the age of the appellant/claimant was about 55 years at the time of accident, as he was said to be labour he would face difficulties in standing for long time and while carrying articles of heavy weight. Therefore, Rs.4,000/- per percentage of disability is granted and hereby, a sum of Rs.60,000/- is awarded towards permanent disability.

11. Under these circumstances, the compensation under the heads awarded by the Tribunal is enhanced and modified as follows:-



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Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Permanent disability(Injured)	45,000	60,000	Enhanced
2	Pain and sufferings	20,000	30,000	Enhanced
3	loss of amenities	20,000	30,000	Confirmed
4	Medical Expenses	68,650	68,650	Confirmed
5	Loss of Income	45,000	45,000	Confirmed
6	Transport expenses	5,000	10,000	Enhanced
7	Extra nourishment	10,000	10,000	Confirmed
8	Attendant charges	4,000	10,000	Enhanced
9	Damage to clothes	1,000	1,000	Confirmed
Total		Rs.2,18,650.00	Rs.2,64,650.00	Enhanced

* Total award amount : Rs.2,64,650.00

Less 20% negligence on the part of the appellant : Rs. 52,930.00

Net Amount : Rs.2,11,720.00

Rounded off to Rs.2,11,700/-

12. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed by enhancing the compensation



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amount to Rs.2,11,700/- from Rs.1,74,920/-
awarded by the Tribunal.

- (ii) The second respondent / Insurance Company is directed to deposit the enhanced award amount i.e., Rs.2,11,700/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1460 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.II, Salem, within a period of four weeks from the date of receipt of a copy of this Judgment.
- (iii) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. No costs.

17.03.2023

Index : Yes/No
Speaking / Non-speaking order
kkd



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R.KALAIMATHI, J.,

kkd

To:

The Motor Accident Claims Tribunal,
Special Subordinate Judge No.II,
Salem.

Pre-delivery Judgment in
C.M.A.No.4326 of 2019

17.03.2023