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C.M.A.No.4834 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.4834 of 2019

Venkatesh @ Venkatachalam

...Appellant

Vs.

1. Venkatesh

2. Reliance General Insurance Co. Ltd.,  
1<sup>st</sup> Floor, Geejay Arcade, 141/71,  
Tiruvankateswamy Salai, R.S.Puram,  
Coimbatore.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in MCOP.No.832 of 2010 dated 30.07.2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge Court, Sankari.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Ms.C.Bhuvanasundari, for R2  
: Notice dispensed with, for R1



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## **JUDGMENT**

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Challenging the judgment and decree passed in MCOP.No.832 of 2010 dated 30.07.2019 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge Court, Sankari, the present appeal has been filed.

2. The case of the appellant is that, on 07.06.2010 at about 7.15 pm, when the appellant was travelling in TVS Victor bearing Regn.No.TN-50-C-7917, a TATA sumo vehicle bearing Regn.No.TN-07-AV-4332 owned by the 1<sup>st</sup> respondent insured with the 2<sup>nd</sup> respondent driven by its driver in a rash and negligent manner, came from behind and dashed against the appellant, as a result of which, the appellant sustained grievous injuries all over his body and got admitted in the hospital, Thereby, the appellant filed a claim petition claiming compensation of Rs.5,00,000/-. After contest, the tribunal, vide impugned judgment dismissed the claim of the appellant. Aggrieved with the said order, the appellant has come up with this appeal.

3. Learned counsel for the appellant submitted that, on the date of accident at about 07.15 pm., the appellant was travelling on Sangagiri to



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Salem road and in order to reach Aattaiyampatti, when he took right, the driver of the 1<sup>st</sup> respondent vehicle came from behind with high speed and dashed against the appellant and the said accident happened solely due to the rash and negligent act of the driver of the 1<sup>st</sup> respondent vehicle, due to which, the appellant sustained permanent disability at the rate of 20%, for which, he is entitled to claim compensation at the hands of the 1<sup>st</sup> and 2<sup>nd</sup> respondent. However, the law enforcing agency had erroneously registered the FIR as against the appellant itself and based on which, the tribunal had rejected the appellant's claim, which is *per se* illegal. Accordingly, he prayed for appropriate orders granting compensation in favour of the appellant.

4. Learned counsel appearing for the 2<sup>nd</sup> respondent submitted that, the appellant himself is the tort-feasor, due to whose negligent act the above said accident took place, since the appellant, without following the traffic rules and without any prior indication suddenly turned towards his right and thereby the accident had taken place, for which, the 2<sup>nd</sup> respondent insurance company cannot be made liable to pay compensation. The tribunal, after



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careful consideration of all the relevant documents placed it, had rejected the appellant's claim, which cannot be said to be erroneous. Accordingly, he prayed for dismissal of the appeal.

5. Heard learned counsel for the appellant as well as the 2<sup>nd</sup> respondent and perused the material documents placed on record.

6. Though, a perusal of the impugned award particularly the depositions made by PW1 and RW2 raises various doubts with regard to the manner in which the accident had happened, however, a perusal of the Ex.P7, sketch makes it clear that when the appellant took a right to reach Aattaiyampatty, the driver of the 1<sup>st</sup> respondent vehicle came from behind with high speed and without noticing the appellant turning right, dashed against the appellant, and thereby the above said accident took place for which, the law enforcing agency had mechanically registered an FIR as against the appellant, which is wholly unsustainable.

7. Though the learned counsel appearing for the 2<sup>nd</sup> respondent places reliance on the deposition of P.W.3, Police official, however, he is not the



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eye witness to the above said accident and only on the basis of his submission, it cannot be held that the accident took place solely due to the rash and negligent driving of the appellant.

8. Hence, this Court holds that, the above said accident took place due to the rash and negligent act of the driver of the 1<sup>st</sup> respondent vehicle, who deposed before the tribunal as R.W2 and therefore the 1<sup>st</sup> respondent being the owner and the 2<sup>nd</sup> respondent being the insurer of the offending vehicle, are jointly and severally liable to compensate the appellant for the injuries sustained by him.

9. Though the appellant claimed that he was working as a contract labour at the time of the accident and was earning a sum of Rs.10,000/- per month, however, except the oral submission, as no other documentary evidence has been produced by the appellant to prove his income, considering the fact that the accident is of the year 2010 and that the appellant was aged about 29 years at the time of accident, this Court fixes the monthly income of the appellant as Rs.5,000/- and awards a sum of Rs.10,000/-(for 2 months) under the head “Loss of income”.



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10. Further, as per the existing law at the relevant point of time, a sum of Rs.3,000/- per percentage of disability has to be adopted. Therefore, the compensation under the head “Disability” is arrived at as Rs.60,000/- (20% x Rs.3,000/- = Rs.60,000/-).

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

| <i>S.No.</i> | <i>Description</i>      | <i>Awarded by<br/>the Tribunal<br/>(Amount in<br/>Rs.)</i> | <i>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</i> |
|--------------|-------------------------|------------------------------------------------------------|----------------------------------------------------------|
| 1            | Disability              | -                                                          | 60,000/-                                                 |
| 2            | Pain and Sufferings     | -                                                          | 30,000/-                                                 |
| 3            | Extra nourishment       | -                                                          | 15,000/-                                                 |
| 4            | Transport to Hospital   | -                                                          | 15,000/-                                                 |
| 5            | Damages to clothes      | -                                                          | 500/-                                                    |
| 6            | Attender charges        | -                                                          | 10,000/-                                                 |
| 7            | Medical expenses        | -                                                          | 29,752/-                                                 |
| 8            | Future Medical Expenses | -                                                          | 10,000/-                                                 |
| 9            | Loss of income          | -                                                          | 10,000/-                                                 |
|              | <b>Total</b>            | -                                                          | <b>1,80,252/-</b>                                        |

12. Accordingly, this appeal is partly allowed and a compensation



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amount of **Rs.1,80,252/-** is awarded in favour of the appellant and the 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of MCOP.No.832 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

**18.12.2023**

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NCC : Yes/No  
Index : Yes/No  
Speaking order : Yes/No



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**M.DHANDAPANI, J.**

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To:

1. The Motor Accidents Claims Tribunal, Subordinate Judge Court,  
Sankari.
2. The Section Officer,  
V.R.Section, High Court, Madras.

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