



C.M.A.No.1444 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1444 of 2019

K.Venkatesan

... Appellant / Petitioner

Vs.

1. Ganesan

2. Pandiarajan

3. The Divisional Manager,
New India Assurance Company Limited,
Karaikal,
1st Floor, MAJ Apartments,
149, Bharathiar Road,
Karaikal.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.10.2014 made in M.A.C.T.O.P.No.233 of 2013 on the file of the Motor Accidents Claims Tribunal (District Judge), Karaikal.



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For Appellant : Ms.G.Lavanya
For Respondents : No appearance for R1
Not ready notice for R2
Mr.J.Michael Visuvasam for R3

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.A.C.T.O.P.No.233 of 2013, the appellant / claimant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. It is the case of the claimant that, on 07.09.2013, at about 7.45 p.m., when the claimant was travelling along with his friend in a motorcycle bearing Registration No.TN-39-AJ-8529, at that time, a Hyundai Accent car bearing Registration No.PY-01-HR-1922 driven by the first respondent in a rash and negligent manner, dashed against the motorcycle, due to which, the claimant sustained grievous injuries and admitted in the hospital. Due to the loss suffered on account of the accident, the claimant, claiming compensation for the injuries suffered and also for loss of income, had filed the claim petition. The said claim was resisted by the Insurance



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Company / third respondent. The first respondent is the driver of the car and the second respondent is the owner of the car.

3. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. The Insurance Company did not let in any evidence either orally or documentary. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a compensation of Rs.1,84,000/ to the claimant. Further, fixing 50% towards the contributory negligence on the part of the rider of the motorcycle, the Tribunal awarded a sum of Rs.92,000/- as compensation to the claimant and directed the Insurance Company to pay the same to the claimant and then recover the same from the second respondent.

4. The learned counsel appearing for the claimant submitted that P.W.2-Doctor assessed the disability of the claimant at 54%. The Tribunal without any reason reduced the disability to 50% as permanent disability and also awarded a sum of Rs.1,00,000/- under the head disability. At the time of



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the accident, the compensation for per percentage of disability is Rs.3,000/-, but in the present case, the Tribunal awarded only Rs.1,00,000/- under the head disability. He further submitted that the Tribunal has erred in fixing 50% contributory negligence on the part of the rider of the motorcycle when the rider of the motorcycle had the valid license and at any rate, the claimant could not be responsible for the accident and hence, prayed for setting aside 50% contributory negligence fixed on the part of the claimant. He further submitted that the compensation awarded under the head pain and sufferings is on the lower side and the same is liable to be enhanced. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of compensation.

5. The learned counsel further submitted that immediately after the accident, the rider of the motorcycle made a complaint through Ex.P1 as against the respondents 1 and 2 and in order to prove the same, no contra evidence was adduced by the Insurance Company or owner of the vehicle. However, without any contra evidence, the Tribunal has fixed 50% contributory negligence on the part of the claimant is unsustainable.



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6. Per contra, the learned counsel appearing for the third respondent / Insurance Company submitted that the Tribunal, taking into consideration all the relevant documents, has rightly fixed the compensation, which does not require any interference. He further submitted that the rider of the motorcycle was not having valid driving licence at the time of the accident and therefore, the Tribunal has rightly held that the rider of the motorcycle was also partly responsible for the accident and fixed 50% contributory negligence on the part of the claimant.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded and the contributory negligence.

9. It is seen from the records that the crucial evidence is P.W.2, the



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doctor, who has deposed that the claimant had suffered 54% disability. The Tribunal, by adopting percentage method, has awarded a sum of Rs.1,00,000/- fixing the permanent disability at 50%. P.W.2-doctor in his cross-examination has deposed that he has not given treatment to the claimant, however, he has assessed the disability on the basis of the medical records of the claimant at 54%. Therefore, the Tribunal was right in fixing the disability of the claimant at 50%. However, Rs.2,000/- awarded per percentage is on the lower side and the same is enhanced to Rs.3,000/-. Thus, the compensation of Rs.1,00,000/- (50% X 2,000/-) awarded towards disability is enhanced to Rs.1,50,000/- (50% X 3,000/-).

10. Further, the Tribunal had awarded a sum of Rs.1,000/- towards damages to clothes; Rs.2,000/- towards rich and nutritious; Rs.2,000/- towards travelling expenses and Rs.29,000/- towards medical expenses. This Court finds that the compensation awarded under the heads damages to clothes, rich and nutritious, travelling expenses and medical expenses are just and reasonable and does not require any interference. However, insofar



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as the compensation awarded towards pain and sufferings is concerned, this Court feels that a sum of Rs.25,000/- would be just and reasonable.

11. Coming to the quantum of compensation awarded by the Tribunal, it is seen that as per Ex.P7, the net salary of the petitioner is 29,092/- per month, but the claimant has not taken any steps to examine the person, who issued Ex.P7. In the absence of sufficient evidence, the Tribunal fixed the monthly income of the claimant at Rs.20,000/- and the claimant would not have attended to his regular work for two months, hence the Tribunal fixed a sum of Rs.40,000/- towards loss of income. Since the claimant has not placed any material evidence to prove the monthly income, this Court fixes a sum of Rs.10,000/- as monthly salary.

12. Insofar as the aspect of contributory negligence is concerned, this Court is of the view that the Tribunal has rightly fixed 50% contributory negligence on the rider of the motorcycle and the same does not require the interference of this Court.

13. In the above circumstances, the compensation awarded by the



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Tribunal under the below mentioned heads is modified as under:

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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Permanent disability (50% x 3,000)	1,00,000/-	1,50,000/-
2	Pain and sufferings	10,000/-	25,000/-
3	Damages to clothes	1,000/-	1,000/-
4	Rich and nutritious	2,000/-	2,000/-
5	Travelling expenses	2,000/-	2,000/-
6	Medical expenses	29,000/-	29,000/-
7	Loss of income	40,000/-	20,000/-
	Total	1,84,000/-	2,29,000/-
	Less:Contributory negligence 50%	92,000/-	1,14,500/-
	Compensation payable	92,000/-	1,14,500/-

14. In the result, this civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal at Rs.92,000/- is hereby enhanced to Rs1,14,500/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The Insurance Company is directed to deposit the entire award amount now determined by



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this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.No.233 of 2013 on the file of the Motor Accidents Claims Tribunal (District Judge), Karaikal and recover the same from the second respondent. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making proper application before the Tribunal. No costs.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To



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1. The Motor Accidents Claims Tribunal (District Judge),
Karaikal.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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