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C.M.A.No.3584 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3584 of 2019

P.Subramani

... Appellant

..Vs..

1.P.Thangavel

2.The Branch Manager,

National Insurance Company Ltd.,

Branch Office, No.7, Raja Street,

Gobichettipalayam 638476

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.02.2012 made in MCOP.No.706 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Special Judge, Krishnagiri)

For Appellant

: Mr.Mukund R.Pandiyan

For Respondents

: Mr.S.Vadivel for R2

JUDGMENT

This appeal has been filed by the appellant seeking to set aside the impugned award dated 20.02.2012 passed in MCOP.No.706 of 2008 passed by the Motor Accidents Claims Tribunal (Additional Special Judge, Krishnagiri).



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WEB COPY 2. The facts of the case, in brief, are as under:

On 18.06.2002 at about 2.30 hours, when the appellant/claimant was walking on the left side of the road near SPB Colony bus stop, the rider of the Bajaj M 80 vehicle bearing Regn.No.TN 28/W.2188 belonging to the 1st respondent and insured with the 2nd respondent, drove the same, in a rash, reckless and negligent manner, came from eastern side and towards western side, i.e ., from Thiruchengode had dashed against the claimant and caused the accident. Due to the impact, the claimant fell down and sustained fracture on his right knee and other multiple injuries on his left shoulder and left hand. The accident occurred only due to the rash and negligent driving of the rider of the Bajaj M 80 vehicle. The Pallipalayam police have registered a case against rider of the said vehicle under Sections 279 and 337 of IPC in Cr.No.516 of 2002. In view of the same, the claimant seeks compensation of Rs.5,00,000/- before the Tribunal. After trial, the claimant was awarded a sum of Rs.81,000/- as compensation. In view of the fact that the accident had occurred due to the contributory negligence of the claimant and driver of the vehicle, the



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Tribunal has imposed the liability in the ratio of 60 : 40 on the appellant and the Insurance Company. In other words, the Tribunal has fixed 60% negligence on the claimant and 40% negligence on the rider of the Bajaj M 80 vehicle and hence directed the Insurance Company to pay 40% of the award amount as compensation to the claimant. Being aggrieved over the aforesaid award, the appellant has filed the present appeal seeking to set aside the award granted by the Tribunal.

3. The learned counsel for the appellant would submit that the Tribunal has failed to see though the appellant had sustained grievous injuries in the accident and the amount awarded by the tribunal was very meagre. It has erred in fastening 40% liability towards the second respondent without even examining the driver of the respondent's vehicle, who is the proper person to speak about the accident. It has erred in deducting the percentage of disability from 40% to 20% without any contra evidence and also not stated the proper reason. It ought to have fixed the disability at the rate of 40% as assessed by the Doctor PW2. The Tribunal ought to have applied multiplier method for calculating future loss of



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income. The amount awarded under various heads are on lower side.

Hence he prays to allow this appeal.

4. On the contrary, the learned counsel for the second respondent /Insurance Company has disputed the contention by stating that the Tribunal has granted reasonable compensation under various heads. He further submitted that the liability fixed on the part of the Insurance Company is correct. Hence, it does not require any interference of this court and prays for dismissal of the appeal.

5. Heard both sides and perused the entire documents produced before this Court.

6. During the trial, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and seven documents were marked as Ex.P.1 to Ex.P.7. On the side of the respondents, neither witness was examined nor any document filed.



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7. On perusal of the award, it is seen that the Tribunal has fixed 40% of liability on the Insurance Company on the ground that the Bajaj M 80 rider would not have expected the sudden crossing of the road by a person in that place. Since the occurrence is at night time, there is possibility of invisibility due to flashing of lights. Considering the facts and circumstances of the case, the Tribunal has fixed 60% and 40% of liability on the claimant and the Insurance Company respectively.

8. On perusal of records, it is seen that since the recitals of the FIR itself narrates the manner in which the accident had occurred and the claimant has invited it and the respondent is not expected to prove contributory negligence and thereby the Tribunal has fixed 60 % : 40 % on the claimant and the Insurance company respectively. Since the claimant has contributed much to the occurrence of the accident in not being careful enough in crossing the road specifically during night time, more negligence is fastened on him.



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9. Considering the facts and circumstances of the case and upon perusing Ex. P1, Ex.P3/ Policy copy, Ex.P4/driving license to the rider of M 80 vehicle and Ex.P5/Accident Register, this court modifies the liability in the ratio of 50% : 50% on the Insurance Company and the claimant respectively.

10. In respect of calculation of disability the PW2/Doctor has assessed the disability at 40%. However the Tribunal has taken only 20% for calculation of temporary disability and awarded only Rs.40,000/- under the said head. Considering the nature of injuries and age of the claimant and since the year of accident is 2002, this court is of the considered view that it would be appropriate to fix disability at 30%. However, the amount fixed by the Tribunal at Rs.2000/- per each percentage of disability is correct and does not need interference of this court. Thus this court grants a sum of Rs.60,000/- (2000 x 30%) towards temporary disability.

11. After considering the aforesaid facts and circumstances of the case, this court opines that the income fixed by the Tribunal at Rs.4500/-



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does not needs modification. The claimant is aged about 43 years at the time of accident and was earning Rs.4500/- per month as a civil worker.

Considering the nature of injuries, this court is inclined to modify the percentage of disability from 20% to 30%. Due to the grievous injuries sustained by the claimant, he would not have been in a position to go to the mill work atleast for a period of four months. Therefore, the partial loss of income fixed by the Tribunal at Rs.18000/-(Rs.4500 x 4 months) does not require any modification and the same is confirmed.

12. The details of the enhanced compensation are as under:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Temporary disability	60,000/- (2000 x 30%)
Partial loss of income	18,000/-
Nutritious food	2,000/-
Attenders expenses	1,000/-
Pain and sufferings	10,000/-
Loss of Amenities	10,000/-
Total	1,01,000/-



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13. Thus, the total compensation is enhanced to **Rs.1,01,000/-**. The Insurance Company is hereby directed to pay 50% of the award amount which works out to Rs.50,500/- and the appellant is directed to borne 50% of award amount which works out to Rs.50,500/- together with interest @ 9% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.706 of 2008 on the file of the Motor Accident Claims Tribunal, (Additional Special Judge, Krishnagiri) within a period of six weeks from the date of receipt of copy of the Judgment. Other terms of the award of the Tribunal shall remain the same.

14. In the result, the appeal is partly allowed and the award passed by the Tribunal in M.C.O.P.No.706 of 2008 is modified accordingly. There shall be no order as to costs.

19.04.2023

Index:Yes/No
Internet:Yes/No
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To

- 1.The Motor Accidents Claims Tribunal
(Additional Special Judge, Krishnagiri)
2. The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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