



C.M.A.No.1475 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1475 of 2019

K.Mohamed Hanief

... Appellant

Vs.

1.V.Velmurugan

2.The Divisional Manager,
United India Insurance Company Ltd.,
DO No.13 A Nethaji Road,
Cuddalore 607 001.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.821 of 2010 dated 15.04.2015 on the file of the Motor Accidents Claims Tribunal (I Additional Sub Court) at Cuddalore.

For Appellant : M/s.D.Baskar
For Respondents : R1 – Not Ready Notice
M/s.R.Sreevidhya for R2

J U D G M E N T



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This appeal has been filed seeking to set aside the judgment and decree dated 15.04.2015 passed by the Motor Accidents Claims Tribunal (I Additional Sub Court) at Cuddalore, in M.C.O.P.No.821 of 2010.

2.The brief facts of the case is that on 10.03.2010 at about 15.15 hours, the appellant claimant was driving the lorry bearing Registration No.AP-03-X-7506 from South to North in Kumbakonam Main Road near Venkateswara Saw Mill, Vadalur. At that time, a lorry bearing Registration No.TAJ-4749 came from the opposite direction in a rash and negligent manner and dashed against the lorry driven by the appellant, due to which, the appellant sustained injuries.

3.Thereafter, the injured claimant/ appellant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.4,28,200/- as compensation and directed the second respondent to pay 50% of the compensation, i.e., Rs.2,14,100/- with interest at the rate of 7.5% p.a. from the date of numbering of the petition i.e., 31.05.2010 till the date of deposit and costs. Aggrieved by the same, the appellant claimant has filed this



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appeal.

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4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the 50% liability fixed on the appellant. The learned counsel further submitted that the Tribunal while answering point no.1, held in favour of the appellant, however, while answering point no.2 held that there is head on collision between two vehicles i.e., appellant's vehicle and first respondent's vehicle and hence, the second respondent is liable to pay 50% of the award amount only. Such contradictory conclusion arrived at by the Tribunal is not sustainable. However, the amount awarded by the Tribunal under various heads are just and reasonable. Hence, this Court may set aside the 50% negligence fixed on the part of the appellant and direct the second respondent to pay the entire compensation in favour of the appellant.

5.The learned counsel appearing for the second respondent Insurance Company submitted that the qualified Doctor assessed the disability suffered by the claimant as 50% permanent disability, for which, the Tribunal awarded a sum of Rs.1 Lakh, however, the amount awarded under the other heads are excessive and prayed for



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modifying the quantum of compensation.

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6.Heard the learned counsel appearing for the appellant claimant and the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

7.Admittedly, on 10.03.2010 at about 15.15 hours, the appellant claimant was driving the lorry from South to North in Kumbakonam Main Road near Venkateswara Saw Mill, Vadalur. At that time, another lorry came from the opposite direction in a rash and negligent manner and dashed against the lorry driven by the appellant, due to which, the appellant sustained injuries.

8.Admittedly, there are two lorries involved in the accident, one driven by the appellant and another owned by the first respondent and insured with the second respondent. The accident and the manner in which the accident happened are not disputed. It is equally undisputed fact that the Tribunal while answering point no.1, held in favour of the appellant, however, while answering point no.2 held that there is head on collision between two vehicles i.e., appellant's vehicle and first respondent's vehicle and hence, the second respondent is



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liable to pay 50% of the award amount only.

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9. When there is no contra evidence available, fixing 50% negligence on the part of the appellant is not sustainable one. Hence, this Court set aside the impugned judgment in respect of the negligence aspect and fix the 100% negligence on the part of the driver of the vehicle insured with the second respondent.

10. Coming to the question of quantum of compensation, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.1,00,000/- for permanent disability, Rs.20,000/- for transport to Hospital, Rs.20,000/- for extra nourishment, Rs.2,000/- for damage to clothing and article, Rs.16,200/- for medical expenses, Rs.70,000/- for pain and sufferings, Rs.1,00,000/- for loss of amenities and enjoyment in life, Rs.1,00,000/- for permanent discomfort and arrived at a total compensation of Rs.4,28,200/- with interest at the rate of 7.5% p.a. from the date of numbering of the petition i.e., 31.05.2010 till the date of deposit.

11. The Doctor has assessed the disability of the injured claimant as 50%. Since the assessment of disability varies from Doctor to



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Doctor, this Court fix the disability of the claimant as 45% and award a sum of Rs.3,000/- per percent of disability since the accident happened during the year 2010 and a sum of Rs.3,000/- per percent disability was awarded at the relevant point of time. Hence, the amount awarded under the head permanent disability works out to Rs.1,35,000/- [45% X Rs.3,000/- = Rs.1,35,000/-]. The amount awarded under the heads pain and sufferings, extra nourishment and transport to Hospital, in the opinion of this Court is excessive and this Court is inclined to reduce the amount awarded under the said heads. Accordingly, the amount awarded for pain and sufferings is reduced to Rs.50,000/- from Rs.70,000/-, the amount awarded for extra nourishment is reduced to Rs.10,000/- from Rs.20,000/- and the amount awarded for transport to Hospital is reduced to Rs.5,000/- from Rs.20,000/-. This Court is of the opinion that some amount has to be awarded for attendant charges. Accordingly, this Court awards a sum of Rs.5,000/- for attendant charges. The amount awarded under the head medical expenses is confirmed.

12.Though the Tribunal has awarded a sum of Rs.1 Lakh for loss of amenities and enjoyment in life and a sum of Rs.1,00,000/- for permanent discomfort based on the decision reported in 2013 (1)



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TNMAC, the said decision was subsequently over-ruled by the decision of the Hon'ble Apex Court in its decision reported in MANU/SC/1018/2010 [Raj Kumar Vs. Ajay Kumar and Ors.]. Hence, this Court deletes the amount awarded under the heads for loss of amenities and enjoyment in life and for permanent discomfort. In the opinion of this Court, the amount awarded under the head for damage to clothing and articles is also not necessary and hence, the amount awarded under the said head is also deleted.

13. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	For permanent disability	Rs.1,00,000/-	Rs.1,35,000/-
2.	For extra nourishment	Rs. 20,000/-	Rs. 10,000/-
3.	For transport to Hospital	Rs. 20,000/-	Rs. 5,000/-
4.	For medical expenses	Rs. 16,200/-	Rs. 16,200/-
5.	For pain and sufferings	Rs. 70,000/-	Rs. 50,000/-
6.	For damage to clothing and article	Rs. 2,000/-	---
7.	For permanent discomfort	Rs.1,00,000/-	---
8.	For loss of amenities and enjoyment in life	Rs.1,00,000/-	---
9	For attendant charges	---	Rs. 5,000/-
	Total	Rs.4,28,200/-	Rs.2,21,200/-



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14.The appellant claimant is entitled to total compensation of Rs.2,21,200/- along with interest at the rate of 7.5% p.a. from the date of numbering of the petition i.e., 31.05.2010 till the date of deposit.

15.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree passed in M.C.O.P.No.821 of 2010 dated 15.04.2015 by the Motor Accidents Claims Tribunal (I Additional Sub Court) at Cuddalore, is modified to the above extent.

16.The second respondent Insurance Company is directed to deposit the modified award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellant/ claimant is permitted to withdraw modified award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal.



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17.The civil miscellaneous appeal is allowed. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal
(I Additional Sub Court) at Cuddalore.



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M.DHANDAPANI,J.
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