



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A(MD)No.23 of 2020

Karunakarapandian

... Appellant

.VS.

1.Chandrababu

2.M/s.United India Insurance Company Limited,
Branch Office, Dindigul.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 14.10.2019 passed in M.C.O.P.No.83 of 2017 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi.

For Appellant : Mr.R.Maheswaran

For Respondents : Mr.G.Prabhu Rajadurai for R2
No appearance for R1



WEB COPY



JUDGMENT

(Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.)**

The claimant/injured is the appellant herein, who has filed a claim petition in M.C.O.P.No.83 of 2017 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi, seeking compensation for the injuries sustained by him in the road accident on 21.07.2016. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P25 were marked and on the side of the respondents, no evidence has been adduced in both oral and documentary.

2. On consideration of the evidence marked by the claimant, the Tribunal has come to the conclusion that the injuries sustained by the claimant is permanent in nature and he has suffered 100% disability and accordingly, applied the ratio laid down by the Hon'ble Supreme Court in the case of ***Rajkumar vs. Ajaykumar reported in 2011 (1) MLJ 779***, and calculated a sum of Rs.71,179/- x 12 x 11 = Rs.93,95,661/- towards permanent disability and for the income tax, 10% has been deducted and



WEB COPY

further held that as per **Rajkumar's** case as stated supra, 1/3rd in his income has not to be deducted necessarily. Based upon Ex.P6, Ex.P9, Ex.P11, Ex.P12 and Ex.P20, the Tribunal has assessed the medical expenses as Rs.9,02,615/- and based on the evidence of P.W.1, the Tribunal has held that since the accident had taken place, due to rash and negligent driving of drivers of both the vehicles, the Tribunal has fixed the negligence as 50% on both the claimant and the first respondent.

3. The learned counsel appearing for the appellant/claimant has drawn our attention to the fact that in respect of the other injured who is also co-passenger in the very same Bolero vehicle, M.C.O.P.No.296 of 2016 has been filed by him and the very same Tribunal has held that due to rash and negligent driving of the offending vehicle, the accident has taken place and the negligence is fixed only on the driver of the offending vehicle. He further submitted that the amount awarded by the Tribunal to the said injured has been settled by the Insurance Company and no appeal has been preferred as against the said award.



WEB COPY

4. Considering the fact that the very same Insurance Company has accepted the findings rendered by the Tribunal in M.C.O.P.No.296 of 2016, we are of the considered view that there cannot be divergent view on the part of rash and negligence. Accordingly, the findings arrived by the Tribunal with regard to the negligence fixed on the claimant is hereby set aside. In the absence of any contra evidence by the Insurance Company and not examination of driver of the offending vehicle, we are of the considered view that the accident has taken place due to rash and negligent driving of the driver of the offending vehicle and accordingly, the entire liability is fixed on the offending vehicle which is insured with the second respondent/Insurance Company and accordingly, the respondents 1 and 2 are jointly and severally liable to pay compensation for the petitioner.

5. Based on Ex.P6, Ex.P9, Ex.P11, Ex.P12 and Ex.P20, the medical expenses is hereby confirmed. The future medical expenses are enhanced from Rs.1,00,000/- to Rs.2,00,000/- and the award under the head pain and sufferings is enhanced from Rs.2,00,000/- to Rs.2,50,000/-. The Tribunal has not awarded any compensation under



WEB COPY

the head loss of amenities and therefore, the appellant/claimant is entitled to a sum of Rs.25,000/- for the same. In all other aspects, the compensation arrived at by the Tribunal with regard to the other heads, is intact.

6. Accordingly, the award of the Tribunal in M.C.O.P.No.83 of 2017 is modified and the compensation awarded by the Tribunal is enhanced from Rs.98,83,170/- to Rs.1,00,58,710/- which shall carry interest at the rate of 7.5% per interest.

7. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.98,83,170/- to Rs.1,00,58,710/-.

(iii) The respondents are directed to deposit the entire compensation of Rs.1,00,58,710/- (if not already deposited) 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.83 of 2017, dated 14.10.2019, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi, within a period of eight weeks from



the date of receipt of a copy of this order.

WEB COPY

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

(T.K.R.,J) (P.B.B.,J)

04.10.2023

Index: Yes/No
Internet: Yes/No
ssb

To

1.Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Thoothukudi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



RMT.TEEKAA RAMAN.,J.

AND

P.B.BALAJI,J

ssb

JUDGMENT MADE IN

C.M.A(MD)No.23 of 2020

04.10.2023