



C.M.A.(MD).No.24 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

C.M.A.(MD).No.24 of 2022

Poomari

... Appellant

Vs.

1.Subbiah

2.HDFC ERGO Insurance Company Limited,
through its Branch Manager,
Office at 3rd Floor,
Thiripura Arcade,
No.75-A, Trivandrum High Road,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1760 of 2018 on the file of the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli, dated 28.04.2021.



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For Appellant : Mr.T.Selvakumaran
For R2 : Mr.N.Shyllappa Kalyan

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal (Special Sub Court dealing with MCOP Cases), Tirunelveli, in M.C.O.P.No.1760 of 2018, dated 28.04.2021, the present appeal has been filed by the petitioner.

2. The brief facts leading to the filing of this appeal are as follows:

On 17.06.2018, at about 10.15 p.m., the petitioner was riding a TVS XL bearing Registration No.TN 76 AH 6913 from West to East on Surandai – V.K.Pudur Main Road near Bangalasurandai, a Bajaj Platina bearing Registration No.TN 76 AH 8867 belonging to the first respondent insured with the second respondent came from opposite direction in a rash and negligent manner and dashed against the petitioner's motorcycle. As a result, he sustained injuries and he was taken to Government Hospital at Tenkasi and admitted as in-patient from



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18.06.2018 to 02.07.2018 and he incurred a sum of Rs.1,00,000/-. A criminal case has been registered against the driver of the first respondent. Hence, the petitioner has filed a claim petition before the Tribunal seeking a sum of Rs.10,00,000/- as compensation. The second respondent/Insurance Company took a stand that the petitioner has no driving licence and there was no negligence on the part of the driver of the first respondent. However, the Tribunal has awarded a sum of Rs. 3,24,000/- as compensation in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Disability 4000 x 55%	Rs.2,20,000/-
2.	Attendant Charges	Rs.5,000/-
3.	Pain and Suffering	Rs.50,000/-
4.	Extra Nourishment	Rs.45,000/-
5.	Loss of Convenience	Rs.50,000/-
6.	Transport Charges	Rs.5,000/-
7.	Loss of Income	Rs.30,000/-
	Total	Rs.4,05,000/-



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3. Thereafter, after deducting 20% towards contributory negligence for not possessing valid driving licence by the claimant, the Tribunal has awarded a sum of Rs.3,24,000/-. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the Tribunal has granted only Rs.30,000/- towards loss of income. Hence, more amount has to be granted. He would further submit that the Tribunal ought to have awarded Rs.5,000/- for every disability.

5. The learned counsel appearing for the second respondent would submit that the Tribunal has rightly deducted 20% towards contributory negligence.

6. In the light of the above submission, now the point arise for consideration in this appeal is whether the Tribunal is right in deducting 20% towards contributory negligence. The Tribunal having found that



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that the driver of the first respondent motorcycle was found intoxicated at the time of accident, merely on non-possession of valid driving licence, 20% of deduction ought not to have been made. Though the claimant did not have a valid licence to drive the motorcycle, that was not the reason for the accident and the accident is mainly due to intoxication of the driver of the first respondent, which has not been taken into consideration by the Tribunal.

7. In such a view of the matter, deducting 20% towards contributory negligence is not proper. At the same time, driving licence is mandatory under the Motor Vehicles Act. Hence, this Court is of the view that at least 10% has to be deducted towards contributory negligence, for non- possessing the valid driving licence. Accordingly, the deduction made by the Tribunal is reduced from 20% to 10%.

8. As far as the compensation, the Tribunal has awarded a sum of Rs.4,000/- for each disability. This Court is of the view that at the relevant point of time, this Court has awarded a sum of Rs.5,000/- for



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each disability. In such a view of the matter, the amount awarded by the Tribunal under the head of disability has been enhanced from Rs. 2,20,000/- to Rs.2,75,000/- (Rs.5,000/- x 55%). After deducting 10% towards contributory negligence, the total award amount comes to Rs. 4,14,000/- (Rs.4,60,000/- -46,000/-) and the amount awarded by the Tribunal under the other heads is confirmed and the finding of the Tribunal with regard to pay and recovery is also confirmed. The learned counsel for the appellant is directed to pay additional Court fee for the enhanced award amount.

9. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs.

23.03.2023

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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To
The Motor Accident Claims Tribunal,
Additional District Judge,
Theni.



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N.SATHISHKUMAR, J.

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