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CMA.No.109 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.109 of 2023

Muthu

... Appellant

VS.

1. Karunanithi

2. The Manager,
United India Insurance Co. Ltd.,
No.2, Dr.Sankaran Road, Namakkal.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 11.10.2022 in M.C.O.P.991/2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The appellant is the claimant in M.C.O.P.991/2017 on the file of the Motor Accident Claims Tribunal, Namakkal. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road



CMA.No.109 of 2023

accident that happened on 07.07.2017.

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2. The brief case of the appellant / claimant is as follows :

On 07.07.2017, the claimant was riding a two wheeler bearing Registration number TN 34 X 0208 on Thiruchengode - Valaraigate Kokkarayanpet main road. When he was nearing Shakthi Murugan Marriage hall, Kollapatti, a speeding tanker lorry bearing Registration number TN 33 AC 8626 hit the two wheeler, as a result of which, the claimant fell down and sustained injuries all over his body. He was immediately rushed to the Government hospital, Thiruchengode.

3. According to the claimant, the rash and negligent driving of the driver of the tanker lorry bearing Registration number TN 33 AC 8626 was the cause of the accident and that since the said vehicle was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor



CMA.No.109 of 2023

Vehicles Act.

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5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the lorry and the claimant in the ratio 90:10 as the claimant did not have a valid driving licence on the date of accident and awarded compensation of Rs.1,27,074/- (90% of total compensation of Rs.1,41,193/-) together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

6. Aggrieved over the quantum of compensation and fastening 10% of contributory negligence on the part of the claimant, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

7. Heard Mr.T.S.Arthanareswaran, learned counsel appearing for the appellant and Mr.D.Bhaskaran, learned counsel for the second respondent.

8. Negligence:

It is seen from the records that the accident took place on



Thiruchengode - Valaraigate Kokkarayanpet main road. The claimant examined himself to prove the manner of accident. His evidence was that the driver of the lorry was rash and negligent in driving his vehicle. FIR (Ex.P1) was registered against the driver of the lorry. There is nothing on record to show that the claimant also contributed to the accident. In the circumstances, fastening 10% of contributory negligence on the part of the claimant by the Tribunal is erroneous and the same is hereby set aside.

9. Quantum:

10. A perusal of the medical records shows that the claimant sustained a fracture on his left wrist. The Medical Board attached to the Government Hospital, Namakkal assessed the disability of the claimant as 15%. According to the claimant, he was working as a cook in a hotel, earning a sum of Rs.12,000/- per month. However, no acceptable evidence was adduced by the claimant to substantiate his contention that he was earning a sum of Rs.12,000/- per month. Hence, a sum of Rs.10,000/- is fixed as notional monthly income of the deceased. On account of the injuries, the claimant would have been out of action atleast for three months and therefore a sum of Rs.30,000/- (10,000 X 3) is



awarded towards loss of income. A perusal of the disability certificate shows that the claimant has not sustained any functional disability warranting this Court to adopt multiplier method. In the circumstances, a sum of Rs.7,000/- is fixed per percentage of partial permanent disability and thus a sum of Rs.1,05,000/- (15 x 7000) is awarded towards disability. The following tabular column would show the award passed by the Tribunal and the modified award passed by this Court:

<i>S. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award of this Court</i>
1	Partial Permanent Disability	Rs.75,000/- (15X5,000)	Rs.1,05,000/- (15X7,000)
2	For Loss of income for three months	Rs.2,500/-	Rs.30,000/- (10,000 X 3)
3	Medical expenditure	Rs.31,193/-	Rs.31,193/-
4	Pain and sufferings	Rs.20,000/-	Rs.20,000/-
5	Attender charges	Rs.2,500/-	Rs.2,500/-
6	Extra nourishment	Rs.5,000/-	Rs.10,000/-
7	For Transport expenses	Rs.5,000/-	Rs.5,000/-
8	Total	Rs.1,41,193/- (less 10% contributory negligence) Rs.1,27,074/-	Rs.2,03,693/-

10. Thus, the compensation awarded by the Tribunal is



CMA.No.109 of 2023

enhanced to Rs.2,03,693/- that would carry interest at the rate of 7.5% per annum.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to Rs.2,03,693/-.
- iii. 10% Contributory negligence fastened on the part of claimant, is set aside.
- iv. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The liability of the first respondent (owner) and the second respondent (the United India Insurance Company Limited) is joint and several and the second respondent, the United India Insurance Company Limited is directed to deposit the enhanced award amount i.e. Rs.2,03,693/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim



CMA.No.109 of 2023

WEB COPY

petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.991/2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

vi. On such deposit being made the appellant, claimant is permitted to withdraw the same with accrued interest and costs, after following due process of law.

28.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
vum

To

- 1.The Motor Accidents Claims Tribunal,
Additional District Court, Namakkal.
- 2.The Section Officer, VR Section,
Madras High Court, Chennai.



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CMA.No.109 of 2023

R.HEMALATHA, J.

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C.M.A.No.109 of 2023



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