



C.M.A.No.634 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.634 of 2021

C.Mathaiyan

... Appellant

Vs.

1.S.Kumar

2.United India Insurance Company Limited,
CB Hub, 1st Floor, 104-A,
Peramanur Main Road,
Peramanur
Salem Dt.636 007.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgment and decree dated 28.02.2020 in M.C.O.P.No.865 of 2019, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, No.2, Salem.

For Appellant : Mr.C.Thangaraju
For Respondents : Mr.A.Dhiraviyanathan for R2



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J U D G M E N T

This appeal has been filed against the judgment and decree dated 28.02.2020 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, No.2, Salem, in M.C.O.P.No.865 of 2019.

2.The learned counsel appearing for the appellant submitted that on 17.09.2018, at about 02.30 p.m., the appellant was riding the two wheeler bearing Registration No.TN 27 K 5805 on the Omalur PS Saragam Naranampalayam near JMB Brick work. At that time, TATA ACE bearing Registration No.TN 29 AE 3143 came in a rash and negligent manner and dashed the appellant, due to which, the appellant sustained injuries.

3.The learned counsel appearing for the appellant further submitted that thereafter, the injured claimant/ appellant filed claim petition before the Tribunal, claiming compensation of Rs.25 Lakhs. After adjudication, the Motor Accidents Claims Tribunal fixed 20% contributory negligence on the claimant and 80% contributory negligence on the driver of the TATA ACE and arrived at a total compensation of Rs.5,74,448/- and directed that the appellant



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claimant is entitled to Rs.4,59,558/- [80% of Rs.5,74,448/-] with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed the second respondent to deposit 80% of the total compensation and to recover the same from the first respondent. Aggrieved by the same, the appellant claimant has filed this appeal.

4.The learned counsel appearing for the appellant further submitted that the appellant has filed this appeal questioning the 20% contributory negligence fixed on the appellant and the quantum of compensation awarded by the Tribunal.

5.The learned counsel appearing for the appellant further submitted that inorder to prove the case, the appellant examined himself as P.W.1 and marked Ex.P1 to Ex.P.10. The Insurance Company examined R.W.1 – Typist, Office of the Inspector of Motor Vehicles, Omalur, Salem and R.W.2 – Deputy Manager of the Office of the second respondent and marked Ex.R1 to Ex.R5. The witness marked one exhibit, Ex.W.1. Though the Insurance Company examined R.W.1 and R.W.2 before the Tribunal, inorder to disprove



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the case, the appellant Insurance Company did not examine any independent eye witness.

6.The learned counsel appearing for the appellant further submitted that the Tribunal fixed 20% contributory negligence on the claimant as if the claimant did not possess valid driving licence, which is highly excessive. The learned counsel further submitted that the accident is of the year 2018, however, the Tribunal awarded only a sum of Rs.3,000/- per percentage of disability and further submitted that the amount awarded under the other heads are also very very meagre and hence, the appellant is entitled for enhancement in compensation.

7.The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal after considering all the factual aspects, awarded the compensation which is just and reasonable and hence, the impugned judgment warrants no interference. The learned counsel further submitted that this Court may confirm the pay and recovery ordered by the Tribunal.



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

9.The accident and the manner in which the accident happened are not disputed. At the time of accident, the appellant claimant as well as the driver of the vehicle owned by the first respondent did not possess valid driving licence and the same is proved by R.W.1 through Ex.W.1. However, the appellant has filed third party claim petition as against other vehicle in which fastening 20% contributory negligence is not sustainable. Hence, this Court reduce the 20% contributory negligence fixed on the appellant claimant to 10% contributory negligence. Since the driver of the vehicle owned by the first respondent did not possess valid driving licence, this Court confirms the pay and recovery ordered by the Tribunal.

10.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.90,000/- for disability, Rs.35,000/- for pain and sufferings, Rs.35,000/- for loss of amenities, Rs.3,25,448/- for medical expenses



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(as per Ex.P.9 series), Rs.48,000/- for loss of earning during the treatment and rest period, Rs.10,000/- for transport expenses, Rs.20,000/- for extra nourishment, Rs.10,000/- for attender charges, Rs.1,000/- for damage to clothes and arrived at a total compensation of Rs.5,74,448/- and directed that the appellant claimant is entitled to Rs.4,59,558/- [80% of Rs.5,74,448/-] with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

11.The Medical Board has assessed the disability of the injured claimant as 30%. At the relevant point of time Rs.7,000/- per percentage of disability was awarded. Hence, the amount awarded for disability works out to Rs.2,10,000/- [30% X Rs.7,000/- = Rs.2,10,000/-]. The amount awarded under the head pain and sufferings, in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.60,000/- from Rs.35,000/-. The amount awarded under the head loss of amenities, in the opinion of this Court is not necessary and the same is deleted. The amount awarded under the other heads, in the opinion of this Court are just and reasonable and the same are confirmed.



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

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Disability	Rs. 90,000/-	Rs.2,10,000/-
2.	Pain and sufferings	Rs. 35,000/-	Rs. 60,000/-
3.	Loss of amenities	Rs. 35,000/-	---
4.	Medical expenses	Rs.3,25,448/-	Rs.3,25,448/-
5.	Loss of earnings during the treatment and rest period	Rs. 48,000/-	Rs. 48,000/-
6.	Transport expenses	Rs. 10,000/-	Rs. 10,000/-
7.	Extra nourishment	Rs. 20,000/-	Rs. 20,000/-
8.	Attender charges	Rs. 10,000/-	Rs. 10,000/-
9.	Damage to clothes	Rs. 1,000/-	Rs. 1,000/-
	Total	Rs.5,74,448/-	Rs.6,84,448/-

13. The appellant claimant is entitled to 90% of the total compensation i.e., Rs.6,16,003/- [90% of Rs.6,84,448/-] along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The pay and recovery ordered by the Tribunal is confirmed.

14. The civil miscellaneous appeal is partly allowed. The judgment and decree dated 28.02.2020 passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, No.2, Salem, in



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M.C.O.P.No.865 of 2019, is modified to the above extent. No costs.

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15.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six 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 the modified/ enhanced 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/ representing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal, Special Subordinate Court, No.2, Salem, shall disburse the compensation amount upon production of certified copy showing proof of payment of Court fee by the appellant/ claimant.

03.12.2024

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Index: Yes/ No Speaking Order: Yes/ No NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Court, No.2, Salem.

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M.DHANDAPANI,J.
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