IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.389 of 2023

D.Arun Murugan

...Appellant

Vs

1.N.Govindarajan
2.The New India Assurance Co. Ltd.,
No.21/2, MSC Complex, 1st Floor,
South Indian Back Upstairs,
Dharmapuri Main Road, Omalur 636 455.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount fixed in the judgment and decree in MCOP.No.614 of 2018 dated 23.11.2022 on the file of the Motor Vehicle Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri.

For Appellant : Mr.I.Siddo

For Respondent : Mr.T.Jayaraman, for R2
Notice not ready for R1

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 23.11.2022 in MCOP.No.614 of 2018.

2. The learned counsel for the claimant would submit that on 24.05.2017, while the appellant was riding his two-wheeler bearing Registration No.TN-19-V-9061 from Bangalore to Hosur NH44 Road, a Lorry bearing Registration No.KA-01-AE-5358, which was driven in rash and negligent manner, had suddenly stopped, due to which, the appellant lost his control and dashed on the backside of the said Lorry and sustained grievous injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

S.No	***Heads***	***Compensation (Rs.)***
1	Loss of Earning Capacity	41,12,640
2	Medical Expenses	10,46,000
3	Future Medical Expenses	60,000
4	Pain and Sufferings	1,00,000
5	Transportation Expenses	50,000
6	Additional Nourishment	50,000
7	Damages to Cloths	1,400
8	Attender Charges	1,50,000
9	Loss of Amenities	1,00,000
	Total	56,70,040

3. He would further submit that due to the said accident, the claimant had sustained the injuries, viz, *Panfacial injuries with bilateral low condyle coronoid fracture, Lefort III fracture with fracture a comminuted maxilla, Left forearm radial shaft, closed fracture, Left forearm lunar shaft closed, comminuted fracture, Left hand middle finger, proximal plalanx closed, comminuted fracture, D3-4 fracture dislocation with significant cord compression (ASIA-A), Displaced fracture of left 1st to 7th ribs posteriorly, Left moderate hemo-pneumothorax.* Due to the said injuries, the claimant had lost sensation below his hip and his movement was restricted. Based on the Ex.X9/Pay slip of the claimant from May 2017 to January 2020, the Tribunal had fixed the income of the deceased as a sum of Rs.42,506/-, by deducting a sum of Rs.3,218/-, which was contributed towards Provident Fund. He would contend that the Tribunal is not supposed to have deducted the said amount.

4. Further, he would contend that though the Doctor, who treated the claimant, had assessed the disability of the claimant as 80%, while awarding compensation, only 40% was taken as functional disability of the claimant by

the Tribunal. The claimant is unable to go for any avocation and his movement is also restricted. Further, the claimant is not in a position to clear his bowel normally and an urine bag is fixed and the same has to be frequently replaced. In such case, the Tribunal is supposed to have taken the entire 100% as functional disability of the claimant.

5. That apart, he would submit that the amount awarded towards the future medical expenses is on the lower side and hence, requests this Court to enhance the same. Further, he would submit that the Tribunal had fastened 25% towards contributory negligence on the part of the claimant and he requests this Court to set aside the same, since the accident was purely occurred due to the sudden application of brake by the Lorry driver.

6. In reply, the learned counsel for the respondent would submit that the compensation awarded by the Tribunal is just and reasonable and hence, he requests this Court to confirm the same. Further, he would request this Court to fix any reasonable percentage, which is not more than 60%, as functional disability, if this Court is inclined to enhance the functional disability.

7. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

8. In the present case, there is no dispute with regard to the occurrence of accident. The main issue that has to be decided in this appeal is with regard to the awarding of quantum of compensation and fixation of contributory negligence by the Tribunal. The accident was occurred in the year 2017 and due to the said accident, the claimant had sustained the injuries viz., *Panfacial injuries with bilateral low condyle coronoid fracture, Lefort III fracture with fracture a comminuted maxilla, Left forearm radial shaft, closed fracture, Left forearm lunar shaft closed, comminuted fracture, Left hand middle finger, proximal plalanx closed, comminuted fracture, D3-4 fracture dislocation with significant cord compression (ASIA-A), Displaced fracture of left 1st to 7th ribs posteriorly, Left moderate hemo-pneumothorax.*

9. Today, the claimant appeared before this Court in a wheel-chair. On his appearance before this Court, this Court had witnessed that the claimant is not in a position to clear his bowel normally and an urine bag is fixed and the

same has to be frequently replaced and total disfunction below the hip, in such case, he will not be able to go for any avocation. Further, it appears that the Doctor, who treated the claimant, had assessed the disability of the claimant at 80%. Hence, the Tribunal should have considered the injuries sustained by the claimant and awarded compensation. However, the Tribunal had taken only 40% as functional disability of the claimant, which is too low. Therefore, this Court is inclined to consider 70% as functional disability of the claimant for the purpose of determination of compensation.

10. As far as the income fixed by the Tribunal is concerned, as per the Ex.X9/Pay slip of the claimant, it is clear that at the time of accident, the claimant was drawing a sum of Rs.45,724/- as income. Out of the said amount, the Tribunal had deducted a sum of Rs.3,218/- which was contributed for Provident Fund. However, this Court is of the considered view that the amount, which was contributed towards Provident Fund, has to be considered as an investment, since the same will be handed over to the claimant after his retirement and hence, the Tribunal is not supposed to deduct the same. The only deduction that has to be made out of the income is the amount, which is

contributed towards the income-tax. In the present case, the total income of the claimant is a sum of Rs.5,48,688/- per annum [Rs.45,724/- * 12 months]. Considering the age of the claimant, 40% has to be added towards the future prospects. Hence, the same would be a sum of Rs.7,68,163/- [Rs.5,48,688/- + Rs.2,19,475/-]. For the said amount, the deduction has to be made for a sum of Rs.38,400/- per annum towards income tax and a sum of Rs.2,400/- towards professional tax. Thus, the income of the deceased would be a sum of Rs.7,27,363/- per annum [Rs.7,68,163/- (-) Rs.40,800/-]. Therefore, by applying 15 as multiplier and taking 70% as functional disability, the loss of income would be calculated as follows:

Rs.7,27,363/- (income) * 15 (multiplier) * (70/100) (functional disability)
= Rs.76,37,312/-

11. Further, it appears that the Tribunal had awarded only a sum of Rs.60,000/- towards Future Medical Expenses and a sum of Rs.1,50,000/- towards Attender's Charges, which are on the lower side. Hence, this Court is inclined to award a sum of Rs.1,60,000/- towards Future Medical Expenses and a sum of Rs.2,00,000/- towards Attender's Charges. With regard to all the other heads, the compensation awarded by the Tribunal are just and reasonable and the same stands confirmed.

12. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	***Heads***	***Compensation awarded by Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Loss of Earning Capacity	41,12,640	76,37,312
2	Medical Expenses	10,46,000	10,46,000
3	Future Medical Expenses	60,000	1,60,000
4	Pain and Sufferings	1,00,000	1,00,000
5	Transportation Expenses	50,000	50,000
6	Additional Nourishment	50,000	50,000
7	Damages to Cloths	1,400	1,400
8	Attender Charges	1,50,000	2,00,000
9	Loss of Amenities	1,00,000	1,00,000
	Total	56,70,040	93,44,712

13. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.93,44,712/-. Accordingly, the award amount stands increased from a sum of Rs.56,70,040/- to Rs.93,44,712/-.

14. As far as the fixation of negligence is concerned, the Tribunal had elaborately discussed about the occurrence of accident and the negligence of

claimant based on the oral and documentary evidences, which reads as follows:

> *"Admittedly the petitioner was proceeding in the Bangalore to Hosur road and it is his evidence the lorry which proceeded ahead of him has suddenly stopped by its driver in the middle of the road and therefore the petitioner dashed the rear side of the lorry inspite of applying sudden brakes and the accident is caused only due to the negligence of the driver of the lorry. The 2nd respondent would contend the petitioner has driven the two wheeler in a rash and negligent manner and dashed the rear side of the lorry and sustained injuries and therefore the accident occurred only due to the negligence of the petitioner. The petitioner during his evidence has denied the contention of 2nd respondent that he is responsible for the accident. On scanning the evidence it is clear the petitioner has not stated that he was wearing head gear at the time of accident. Only in the discharge summary which was taken long after the accident it was mentioned the petitioner has weared helmet. The petitioner had also sustained panfacial injuries which shows if head gear was worn, the injuries to the face could have been avoided. The nature of the injuries to the face probabilise the fact the petitioner was not wearing head gear at the time of accident.*
>
> *The motor vehicle inspection report of the lorry marked as Ex.P5 and evidence of RW2 shows the damages to the lorry*

is only on the rear right brake light and guard damaged. Whereas the damages to the two wheeler are severe and it is on the front portion of the two wheeler. There is no explanation why the MVI report of the two wheeler was not produced. At the same time the evidence of RW2 was not challenged and the damages to the vehicles shows the two wheeler was driven in a rash manner and the distance between the vehicles in the highway was not followed by the rider. Admittedly the lorry is loaded with goods and it was proceeding ahead of the two wheeler. The Bangalore Hosur National Highway is a three way lane and there is exclusive marking on the left side of the road for the movement of the two wheelers. The rough sketch prepared by the police regarding the accident was also not produced and from the narration of the accident it could be seen the petitioner has not followed the two wheeler lane rather had used the lane which was utilised by the heavy vehicles and other type of four wheelers and multi axle vehicles. If the petitioner had maintained sufficient distance between the vehicles the accident could have been avoided. The fact the petitioner dashed the lorry on its rear side shows the petitioner has driven the two wheeler in a negligent manner. Even otherwise if a multi axle moving ahead of the petitioner has stopped in the middle of the road, if the petitioner had maintained sufficient distance he could have moved to the *other lane and avoided the accident and the nature of the two wheeler used by the petitioner also points out it is an advanced two wheeler with disc brakes It is not the case of the petitioner the accident is due to mechanical defect of the vehicle. The driver of the lorry or any independent witness was not examined by the 2nd respondent to shift the entire negligence on the part of the petitioner. No inroad was made in the cross examination. Though the driver of the lorry was not examined, considering the manner of accident the negligence of the driver of the lorry is fixed as 75% and that of the petitioner as 25% and the points are answered."*

15. Upon perusal of the above, it appears that the Tribunal had rightly fastened 25% contributory negligence against the claimant and the same does not need any interference. Hence, this Court is inclined to confirm the same. Accordingly, the 25% contributory negligence fixed by the Tribunal against the claimant stands confirmed. Hence, the Insurance Company is liable to pay only 75% of the amount awarded by this Court, which would be a sum of Rs.70,08,534/-.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.70,08,534/- (75% of the award amount) along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.614 of 2018 on the file of the Motor Vehicle Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri. Upon such deposit, the Tribunal is directed to transfer the award amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs.

28.03.2024

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

KRISHNAN RAMASAMY,J.

nsa

C.M.A.No.389 of 2023

28.03.2024