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Civil Miscellaneous Appeal No.1445 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1445 of 2023

and

C.M.P.No.14412 of 2023

The Divisional Manager,
The Oriental Insurance Company Limited,
Vijayalakshmi complex
No.32/312, 13th Street, Phase II,
Sathuvacheri, Vellore – 632 009

... Appellant

Vs.

1. Jayakumar

2. The Chairman

The Sun Arts and Science College,
Keeranur Village, Rajapalayam Post,
Thiruvannamalai Taluk and District

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P No.956 of 2017 dated 06.02.2023 on the file of the Learned Motor Accident Claims Tribunal (Special Subordinate Court), Tiruvannamalai.



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For Appellant : Mr.J.Chandran
For Respondents : Mr. M.A.Prashath Kumaran
for R 1

JUDGMENT

The appellant insurance company, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Subordinate Court), Tiruvannamalai in M.C.O.P No.956 of 2017 dated 06.02.2023, has filed this appeal.

2. The case of the claimant is that on 13.08.2024, he was travelling as a pillion rider in a two wheeler, which was driven by his cousin and they were proceeding from Nookampadi to Randham Road and at about 8.00 a.m, in the scene of occurrence, the offending vehicle which was a college bus was driven in a rash and negligent manner and it came in the opposite direction and dashed against the two wheeler. The claimant suffered “post Traumatic ulnar nerve injury right”. In view of the same, the claimant under went treatment as an inpatient for nearly 20 days in three phases and he also underwent a couple of surgeries. The



disability was assessed by the medical board at 40%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal found that the rider of the two wheeler in which the claimant was travelling, did not possess a valid driving license. Therefore, the Tribunal attributed 15% contributory negligence.

4. The Tribunal thereafter proceeded to fix the total compensation payable at Rs.12,30,390/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of Functional disability (40%)	Rs.8,46,720/-
2.	Pain and sufferings	Rs.35,000/-
3.	Extra Nourishment	Rs.10,000/-



Sl. No.	Compensation awarded under the head	Amount (in Rs.)
4.	Medical Expenses	Rs.2,68,670/-
5.	Attender Charges	Rs.10,000/-
6.	Transportation expenses	Rs.10,000/-
7.	Loss of Amenities	Rs.50,000/-
	Total	12,30,390/-

Out of the above compensation, 85% liability was fastened against the insurance company and the insurance company was directed to pay a sum of Rs.10,45,832/- with interest at the rate of 7.5% p.a.

4. Questioning the quantum of compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

5. Heard Mr.J.Chandran, learned counsel for appellant insurance company and Mr. M.A.Prashath Kumaran, learned counsel for 1st respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.



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7. This Court also carefully went through the award passed by the Tribunal.

8. Learned counsel for appellant submitted that the accident in this case had happened in the year 2014 and the injured was examined in the year 2022 and there was absolutely no material available before the Court at that stage to come to a conclusion that the claimant suffered from functional disability. In view of the same, it was contended that the Tribunal ought not to have adopted the multiplier method. As an alternative submission, it was contended that the medical board had assessed 40% partial permanent disability and the entire 40% ought not to have been taken and the Tribunal should have reduced the percentage by taking into account the whole body.

9. The learned counsel for appellant also questioned the quantum of compensation that was fixed under the head of disability.

10. In the instant case, the injury that was sustained by the claimant required treatment in the hospital on three occasions. The first



phase was from 13.08.2014 to 25.08.2014, which is borne out by Ex.P9.

The 2nd phase is 28.10.2014 to 30.10.2014, which is borne out by Ex.P10. The 3rd phase of treatment was from 08.06.2015 to 11.06.2015, which is borne out by Ex.P11.

11. On carefully going through all the above exhibits, it is seen that the claimant has sustained a very serious injury to his right elbow. The effect of this injury has been spoken to by the Doctor, who was examined as PW2. The doctor has stated that the claimant will not be able to lift heavy weight and he will not be able to continue to do the work as was done before. It must be kept in mind that the claimant was working as a mason and he was almost 23 years at the time of the accident. In view of the same, the Tribunal on considering the avocation and the disability suffered by the claimant and taking into consideration the contention put forth on the side of the claimant to the effect that the claimant suffered 100% disability since he will not be able to carry on with his avocation, ultimately, the Tribunal fixed 40% as functional disability of the claimant. This finding of the Tribunal does not suffer from any illegality and it is based on the materials placed before the Tribunal.



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12. The Tribunal has rightly invoked the multiplier method by fixing the notional income at Rs.7,000/- and added 40% towards future prospects.

13. The compensation that has been fixed under the other heads are reasonable and it does not require the interference of this Court.

14. Insofar as the contributory negligence that was fixed by the Tribunal, it is seen that the claimant in this case was the pillion rider. Even if the rider of the two wheeler does not possess a valid driving license, that fact by itself will not be a ground to attribute contributory negligence unless the non possession of driving license has resulted in some negligence on the part of the rider of the two wheeler. No such material is available to come to such a conclusion. The judgement of the Apex Court in ***[Dinesh Kumar J Vs. National Insurance Company Limited and others]*** reported in ***2018 1 SCC 750*** should be kept in mind while dealing with this issue. Therefore, this Court is inclined to interfere with the findings of the Tribunal attributing 15% contributory negligence



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on the claimant and the same is hereby set-aside.

15. In fine, the compensation fixed by the Tribunal is hereby confirmed and since, this Court has interfered with the contributory negligence, the entire compensation amount of Rs.12,30,390/- has to be paid to the claimant with interest, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, the claimant is entitled to withdraw the entire compensation amount along with interest. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH.,J

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To

Motor Accident Claims Tribunal (Special Subordinate Court),
Tiruvannamalai.

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