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Civil Miscellaneous Appeal No.1510 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1510 of 2024

M.Kalaiarasan
S/o.Muruganantham

... Appellant

Vs.

1.A.Sathish
S/o.Annadurai

2.M/s.United India Insurance Company Ltd.,
No.2, Bhuvanewari Complex,
Dr.Sankaran Road,
Namakkal Taluk & District.
Pin - 637 001.

... Respondents

[The first respondent remained *ex parte* before the Tribunal, hence notice may be dispensed with for the first respondent in this appeal]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.09.2019 made in M.C.O.P.No.696 of 2016 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.M.Lokesh

For Respondents : Mr.D.Venkatachalam [R2]

JUDGMENT

The appellant/claimant, not being satisfied with the quantum of

<https://www.mhc.tn.gov.in/> compensation awarded by the Motor Accident Claims Tribunal, Chief



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Judicial Magistrate, Namakkal, in M.C.O.P.No.696 of 2016, dated 07.09.2019, has filed this appeal.

2. The case of the claimant is that on 05.06.2016, he was riding a two wheeler at Namakkal - Sendamangalam main road and at about 10.00 a.m., when the two wheeler was coming near PGP school at Vettambadi, the offending vehicle, a Mahindra Maxi Pick Up Van belonging to the first respondent was driven in a rash and negligent manner and it hit the two-wheeler, as a result of which the claimant sustained right leg tibia fracture. The claimant underwent treatment as an inpatient from 05.06.2016 to 25.06.2016. The doctor, who treated the claimant, was examined as PW-2 and he issued the disability certificate marked as Ex.P9 by assessing the disability at 38%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

3. The Tribunal, on considering the facts and circumstances and 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.



However, the Tribunal took into consideration the fact that the claimant was riding the two wheeler without a headgear and attributed 15% contributory negligence against the claimant. Thus, only 85% liability was saddled against the insurance company. Having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.2,00,200/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical expenses	99,200/-
2.	Permanent disability	45,000/-
3.	Pain and suffering	30,000/-
4.	Loss of earnings	18,000/-
5.	Transportation	4,000/-
6.	Extra nourishment	4,000/-
	Total	2,00,200/-

Out of this amount, a sum of Rs.1,70,170/- (85%) was directed to be paid as compensation along with interest at 7.5% p.a.

4. The claimant, not being satisfied with the quantum of compensation awarded by the Tribunal and also the finding of the Tribunal attributing 15% contributory negligence, has filed this appeal seeking compensation.



5. Heard Mr.M.Lokesh, learned counsel for appellant/claimant and Mr.D.Venkatachalam, learned counsel for second respondent insurance company.

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

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

8. The first issue is with regard to attributing 15% contributory negligence against the claimant. The Tribunal, on appreciation of evidence of PW-1 considered along with the First Information Report, marked as Ex.P1, came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal attributed 15% contributory negligence against the claimant on the ground that he was not wearing a helmet. The non-wearing of a helmet in the instant case has not really contributed to the negligence and therefore, the Tribunal ought not to have attributed 15% contributory negligence



9. Insofar as the quantum of compensation is concerned, the Tribunal has fixed the disability at 15% even though PW-2, doctor, has assessed the disability at 38%. The claimant ought to have submitted himself for assessment before the Medical Board to assess the disability and for that reason, the claimant did not go before the Medical Board. Considering the nature of injury sustained by the claimant and the disability certificate given by the doctor, the Tribunal had fixed the disability at 15%. This Court does not find any perversity in the said finding of the Tribunal.

10. The Tribunal had adopted per percentage method and Rs.3,000/- was awarded per percentage. The accident in this case had taken place in the year 2016 and therefore, this Court is inclined to award a sum of Rs.5,000/- per percentage. Thus, the compensation awarded



under the head 'disability' is fixed at Rs.75,000/- (5000 * 15). The claimant in this case had undergone treatment as an inpatient from 05.06.2016 to 25.06.2016. In view of the same, this Court is inclined to enhance the compensation under the heads 'extra nourishment' and 'transport expenses' to Rs.15,000/- each. The Tribunal has not granted any compensation under the head 'attender charges' and hence, this Court is inclined to grant Rs.15,000/- under this head.

11. The compensation awarded under the other heads does not require the interference of this Court.

12. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Medical expenses	99,200/-	99,200/-
2.	Permanent disability	45,000/-	75,000/-
3.	Pain and suffering	30,000/-	30,000/-
4.	Loss of earnings	18,000/-	18,000/-
5.	Transportation	4,000/-	15,000/-
6.	Extra nourishment	4,000/-	15,000/-
7.	Attender charges	-	15,000/-
	Total	2,00,200/-	2,67,200/-



13. The compensation awarded by the Tribunal at Rs.2,00,200/- is enhanced to Rs.2,67,200/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, 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. Insofar as the enhanced compensation of Rs.67,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 1568 days as was ordered by this Court in C.M.P.No.8278 of 2024 in C.M.A.Sr.No.45336 of 2024 dated 13.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

14. It is made clear that the Tribunal had invoked the principle of pay and recover on the ground that the driver of the offending vehicle did not possess valid driving license and hence, it is left open to the second respondent insurance company to pay the compensation and recover the same from the first respondent.



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In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

04.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Namakkal.

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