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CMA.No.1622 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1622 of 2024

Sathiyamoorthi

... Appellant

VS.

1. Boopathi
2. Saravanakumar
3. The Magma HDI General Insurance Co. Ltd.,
No.148-150, Creative Enclave, 2nd Floor,
Luz Church Road, Mylapore,
Chennai - 600 004.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 01.09.2023 in M.C.O.P.762/2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No-I, Salem.

For Appellant : Mr.T.S.Arthanareeswaran
For R3 : Mrs.R.Sreevidhya

J U D G M E N T

The appellant is the claimant in M.C.O.P.762/2020 on the file of the Motor Accident Claims Tribunal, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of the M.A.C.T.



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Rules seeking compensation of Rs.25,00,000/- for the injuries sustained by him in a road accident which happened on 16.02.2020.

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

On 16.02.2020, the claimant was travelling as a pillion rider in a two-wheeler bearing Registration number TAN 9555 on Pallipalayam-Kokkarayanpet road. At about 4.00 p.m., a speeding Lorry bearing Registration number TN 57 K 2122, 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 Government Hospital, Erode and subsequently, he was admitted in Lotus hospital, Erode and was given treatment as an inpatient, for about 20 days.

3. According to the claimant, the rash and negligent driving of the driver of the Lorry bearing Registration number TN 57 K 2122 was the cause of the accident and that since the said vehicle was insured with the third respondent, the Magma HDI General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.



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4. In the Tribunal, the driver and the owner of the Lorry remained absent and were set *exparte*. The Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the driver of the Lorry bearing Registration number TN 57 K 2122 and the claimant in the ratio 80:20 and directed the third respondent, Magma HDI General Insurance Company to pay compensation of Rs.5,06,666/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 01.09.2023. The Tribunal also held that the liability of the owner of the lorry and the insurer is joint and several.

6. Aggrieved over the quantum of compensation and the contributory negligence fastened on the part of the deceased to the extent of 20% by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



7. Heard Mr.T.S.Arthanareeswaran, learned counsel appearing

for the appellant and Mrs.R.Sreevidhya, learned counsel for the third respondent.

8. Negligence:

8.1. The Tribunal has fastened 20% contributory negligence on the part of the rider of the two wheeler bearing Registration number TAN 9555 on the ground that he drove the vehicle with two pillion riders. The Police based on the information given by the driver of the Lorry bearing Registration number TN 57 K 2122, registered FIR (Ex.P1) against the rider of the two wheeler. In any event, the claimant was only a pillion rider and there is nothing on record to show that he also contributed to the accident.

8.2. It is settled law that if two tort-feasors are involved in an accident, the claimant can proceed against any one of the tort-feasors and all the tort feasors need not be shown as respondents. In the instant case, the claimant has chosen to proceed against the driver of the Lorry and its insurer. In the circumstances, fastening 20% of contributory negligence on the part of the pillion rider of the two wheeler by the Tribunal, is erroneous.



9. Quantum:

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9.1. A perusal of the discharge summary shows that the claimant sustained the following injuries:

Polytrauma

- i. Multiple ribs fracture (3rd-10th ribs) left side with haemopneumothorax.*
- ii. compression fracture L3 Vertebra, Fracture spinous process L2 Vertebra*
- iii. Degloving injury Right arm with loss of anterior compartment muscles.*

9.2. The Medical Board attached to Government Hospital, Salem had assessed the partial permanent disability of the claimant as 25%. Since there is no functional disability, the Tribunal has awarded a sum of Rs.30,000/- towards partial permanent disability. The accident took place in the year 2020 and therefore a sum of Rs.7,000/- is awarded per percentage of partial permanent disability. Thus, a sum of Rs.1,75,000/- is awarded towards partial permanent disability. On account of the injuries, the claimant would have been out of action atleast for six months and therefore a sum of Rs.54,000/- (9,000 X 6) is awarded towards loss of income.



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10. The following tabular column would show the award passed

by the Tribunal and the modification of the same by this Court:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award of this Court</i>
1	Pain and sufferings	Rs.30,000/-	Rs.30,000/-
2	Loss of income	Rs.27,000/-	Rs.54,000/- (9,000X6)
3	Medical expenses	Rs.3,80,332/-	Rs.3,80,000/-
4	Transportation charges	Rs.20,000/-	Rs.20,000/-
5	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
6	Attender's chages	Rs.15,000/-	Rs.15,000/-
7	Damage to clothings	Rs.1,000/-	Rs.1,000/-
8	Discomfort for life	Rs.15,000/-	Rs.15,000/-
9	Disability	Rs.1,25,000/-	Rs.1,75,000/- (25 X 7000)
	Total	Rs.6,33,332/-	Rs.7,10,000/-
		80% Rs.5,06,666/-	100% entire compensation

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.7,10,000/- which would carry interest at the rate of 7.5% per annum.



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12. In the result,

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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced Rs.7,10,000/-.
- iii. 20% Contributory negligence fastened on the part of the appellant, 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 second respondent (owner) and the third respondent (the Magma HDI General Insurance Company Limited) is joint and several and the third respondent, Magma HDI General Insurance Company Limited is directed to deposit the entire award amount i.e. Rs.7,10,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim 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.762/2020 on the file of the Motor



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vi. On such deposit being made the appellant, claimant is permitted to withdraw the same with accrued interest and costs in accordance with law.

vii. The appellant/claimant is not entitled to claim any interest for the period of delay of 131 days in filing this appeal.

12.09.2024

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

To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Judge No-I, Salem.

2. The Section Officer, VR Section,
Madras High Court, Chennai.

R.HEMALATHA, J.



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