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C.M.A.No.2140 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2140 of 2021

V.Suresh

... Appellant

Vs.

1.K.Shankar

2.ICICI Lombard General Insurance Company Limited,
No.84 & 85, 1st Floor,
Walltax Road,
Chennai – 79.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in M.C.O.P.No.6065 of 2016 dated 06.11.2020, on the file of the Motor Accidents Claims Tribunal/ (Special Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai.

For Appellant : Mrs.Ramya V.Rao
For Respondents : R1 – No Appearance
Mr.B.Sivakollappan for R2

J U D G M E N T

This appeal has been filed against the judgment and decree dated 06.11.2020 passed by the Motor Accidents Claims Tribunal /



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(Special Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai, in M.C.O.P.No.6065 of 2016.

2.The learned counsel appearing for the appellant submitted that on 09.06.2016, at about 10.45 hours, the appellant was riding the two wheeler bearing Registration No.TN 05 AX 4136 from Sharma Nagar Market to his house at Sharma Nagar, S.A.Colony 5th Street, near Door No.274, Vyasarpadi, Chennai. At that time, the motorcycle bearing Registration No.TN 05 BB 6775 came in a rash and negligent manner in the opposite direction and dashed the motorcycle driven by 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.10 Lakhs. After adjudication, the Motor Accidents Claims Tribunal fixed 25% contributory negligence on the claimant and 75% contributory negligence on the rider of the motorcycle bearing Registration No.TN 05 BB 6775 and arrived at a total compensation of Rs.1,97,575/- and directed that the appellant claimant is entitled to Rs.1,48,181.25 rounded off to Rs.1,48,181/- [75% of Rs.1,97,575/-] with interest at



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the rate of 7.5% p.a. from the date of filing of the claim petition i.e.,28.09.2016 till the realization and costs and directed the second respondent to deposit the said amount. 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 25% 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 in order to prove the case, the appellant examined himself as P.W.1 and marked Ex.P1 to Ex.P.11. The Insurance Company did not examine any witness and marked Ex.R1 – Rough sketch copy and one Court document was marked as exhibit Ex.C1. In order to disprove the case, the appellant Insurance Company did not examine any independent eye witness, however, the Tribunal fixed 25% contributory negligence fixed on the appellant, which is not sustainable one.



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6.The learned counsel appearing for the appellant further submitted that the accident is of the year 2016, 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.

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 is not disputed. Admittedly, the appellant examined himself as P.W.1 and in order to disprove the case, the appellant Insurance Company did not examine any independent eye witness. The Tribunal has fixed 25% contributory negligence on the



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claimant on the ground that during cross examination P.W.1 admitted that the accident occurred as shown in the rough sketch and as per rough sketch, the accident occurred on the middle of the road and it is head on collision. This Court perused the cross examination of P.W.1 and it makes it clear that due to the rash and negligent driving of the first respondent, the accident occurred and it did not attribute any contributory negligence. Hence, this Court fix the entire negligence on the first respondent/ rider of the vehicle insured with the second respondent.

10.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.60,000/- for disability, Rs.20,000/- for pain and sufferings, Rs.3,000/- for transportation, Rs.63,325/- for medical expenses, Rs.15,000/- for extra nourishment, Rs.1,250/- for attender charges, Rs.15,000/- for loss of earning, Rs.20,000/- for loss of future prospectus and arrived at a total compensation of Rs.1,97,575/- and directed that the appellant claimant is entitled to Rs.1,48,181.25 rounded off to Rs.1,48,181/- [75% of Rs.1,97,575/-] with interest at the rate of 7.5% p.a. from the date of filing of the claim petition i.e.,28.09.2016 till the realization.



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11.The Medical Board has assessed the disability of the injured claimant as 20%. At the relevant point of time Rs.5,000/- per percentage of disability was awarded. Hence, the amount awarded for disability works out to Rs.1,00,000/- [20% X Rs.5,000/- = Rs.1,00,000/-]. The amount awarded under the heads pain and sufferings, transportation, extra nourishment, attender charges, loss of earnings, in the opinion of this Court are low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.50,000/- from Rs.20,000/-, the amount awarded for transportation is enhanced to Rs.10,000/- from Rs.3,000/-, the amount awarded for extra nourishment is enhanced to Rs.20,000/- from Rs.15,000/-, the amount awarded for attender charges is enhanced to Rs.10,000/- from Rs.1,250/-, the amount awarded for loss of earnings is enhanced to Rs.20,000/- from Rs.15,000/-. The amount awarded under the head loss of future prospectus, in the opinion of this Court is not necessary and the same is deleted. The amount awarded under the head medical expenses, in the opinion of this Court is just and reasonable and the same is 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. 60,000/-	Rs.1,00,000/-
2.	Pain and sufferings	Rs. 20,000/-	Rs. 50,000/-
3.	Transportation	Rs. 3,000/-	Rs. 10,000/-
4.	Medical expenses	Rs. 63,325/-	Rs. 63,325/-
5.	Extra nourishment	Rs. 15,000/-	Rs. 20,000/-
6.	Attender charges expenses	Rs. 1,250/-	Rs. 10,000/-
7.	Loss of earnings	Rs. 15,000/-	Rs. 20,000/-
8.	Loss of future prospectus	Rs. 20,000/-	---
	Total	Rs.1,97,575/-	Rs.2,73,325/-

13. The appellant claimant is entitled to total compensation of Rs.2,73,325/- along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition i.e., 28.09.2016 till the realization.

14. The civil miscellaneous appeal is partly allowed. The judgment and decree dated 06.11.2020 passed by the Motor Accidents Claims Tribunal / (Special Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai, in M.C.O.P.No.6065 of 2016, 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 Sub Court No.1, Motor Accidents Claims Petitions), Small Causes Court, Chennai, shall disburse the compensation amount upon production of certified copy showing proof of payment of Court fee by the appellant/ claimant.

19.12.2024

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

To

1.The Motor Accidents Claims Tribunal/
(Special Sub Court No.1, Motor Accidents Claims Petitions),
Small Causes Court, Chennai.

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M.DHANDAPANI,J.
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