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CMA.No.1329 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1329 of 2024

Kanagaraj

... Appellant

vs.

1. Mohamed Ansari

2. Shaha Abdul Hameed

3.IFFCO-TOKIO, General Insurance Company Limited,
Represented by its General Manager,
Having office at No.28, (Old No.195),
North Usman Road, T.Nagar,
Chennai.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 08.03.2024 in M.C.O.P. 99 of 2021 on the file of the Motor Accident Claims Tribunal, Sub Court, Karaikal.

For Appellant : Mr.R.Natarajan

For R3 : Ms.R.Rathnathara



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J U D G M E N T

The appellants are the claimants in M.C.O.P. 99 of 2021 on the file of the Motor Accident Claims Tribunal, Karaikal. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,57,583/- for the injuries sustained by him in a road accident that occurred on 10.03.2020.

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

On 10.03.2020, the claimant was riding his two wheeler bearing Registration Number PY-01-CC-1490 on Bharathiar Road, Karaikal and a speeding car bearing Registration Number TN-51-AD-3451 belonging to the second respondent came in the opposite direction and hit the two wheeler driven by the claimant, as a result of which, he sustained injuries all over his body. He was immediately rushed to Government Hospital, Karaikal from where he was referred to Krishna Hospital, Mayiladuthurai for further treatment.



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3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration Number TN-51-AD-3451 was the cause of the accident and that since the said vehicle was insured with the third respondent, the Iffco-Tokio, General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal the driver and owner of the car remained absent and were set *ex parte*. The third respondent 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 car bearing Registration Number TN-51-AD-3451 and the claimant in the ratio 90:10 and directed the third respondent to pay compensation of 7,91,541/- (90% of the total compensation of Rs.8,79,490/-) to the appellant (claimant) together with interest at the rate of 7.5% per annum from the date of the



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petition till the date of realisation, vide its orders dated 08.03.2024. The Tribunal also held that the liability of the respondents are joint and several.

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

7. Heard Mr.R.Natarajan, learned counsel appearing for the appellants and Ms.R.Rathnathara, learned counsel appearing for the third respondent.

8. Mr.R.Natarajan, learned counsel appearing for the appellant contended that the claimant was a Assistant Field Officer in Agricultural Department, Karaikal, earning a sum of Rs.60,000/- per month. However, the Tribunal fixed the notional monthly income of the claimant only as Rs.5,000/-. He further contended that the left leg of the claimant was amputated below the knee level and the Medical Board attached to



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Government Hospital, Karaikal has assessed the partial permanent disability of the claimant as 70%. However, the Tribunal had not awarded just compensation to the claimant. He therefore prayed for enhancement of compensation.

9. Per contra Ms.R.Rathnathara, learned counsel appearing for the third respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. It is seen from the records that the entire negligence was fixed on the second respondent's vehicle bearing Registration Number TN-51-AD-3451. However, the Tribunal had fixed contributory negligence on the part of the claimant to the extent of 10% since he did not have a valid driving licence on the date of accident. When the negligence is on the part of the driver of the car fastening contributory negligence on the claimant on the ground that he did not have a driving licence on the date of accident is erroneous. Moreover, there is nothing on



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record to show that the claimant also contributed to the accident. Hence, the order of the Tribunal fastening negligence on the part of the claimant to the extent of 10% is set aside.

11. The Medical Board attached to Government Hospital, Karaikal, has assessed the partial permanent disability of the claimant as 70%. The Tribunal has awarded Rs.5,000/- per percentage of disability since there was no functional disability. The disability certificate does not speak about functional disability. The age of the claimant was 59 years at the time of accident and the accident took place in the year 2020. Considering the same, awarding Rs.7,000/- per percentage would meet the ends of justice. Therefore, a sum of Rs.4,90,000/- ($7,000 \times 70 = 4,90,000$) is awarded towards partial permanent disability. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



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S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Partial Permanent Disability (Rs.7,000/- x 70 = 4,90,000)	3,50,000/-	4,90,000/-
2.	Pain and sufferings	50,000/-	2,00,000/-
3.	Loss of amenities	50,000/-	50,000/-
4.	Attender's charges	50,000/-	50,000/-
5.	Transport expenses	25,000/-	30,000/-
6.	Extra nourishment	25,000/-	50,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Medical Bills	3,28,490/-	3,28,490/-
TOTAL		8,79,490/-	11,99,490/-

12. Thus, the compensation awarded by the Tribunal is enhanced to Rs.11,99,490/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.



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- ii. The compensation awarded by the Tribunal is enhanced to Rs.11,99,490/- with interest at the rate of 7.5% per annum.
- iii. The orders passed by the Tribunal fixing 10% of contributory negligence on the part of the claimant is set aside.
- iv. The appellant / claimant is directed to pay the 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 third respondent, the Iffco-Tokio, General Insurance Company Limited, is directed to deposit the enhanced compensation amount i.e., Rs.11,99,490/- (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. 99 of 2021 on the file of the Motor



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vi. On such deposit being made, the appellant / claimant is at liberty to withdraw the same, after following due process of law.

20.09.2024

Index : Yes/No
Speaking/Non-speaking order
mtl

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Karaikal.

2.IFFCO-TOKIO, General Insurance Company Limited,
Represented by its General Manager,
Having office at No.28, (Old No.195),
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Chennai.

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



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R.HEMALATHA, J.

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